

**REQUEST FOR PROPOSALS
FOR PROVIDING AS-NEEDED SERVICES FOR THE IMPLEMENTATION OF THE
HOME EFFICIENCY REBATES PROGRAM (SECTION 50121)
IN NEW MEXICO
ISSUED BY THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
ENERGY CONSERVATION AND MANAGEMENT DIVISION**

Section 1. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division (ECAM) is requesting proposals for the management and implementation of the Inflation Reduction Act (IRA) Home Efficiency Rebates (HER) Program (Section 50121) for single-family homes or multifamily buildings.

Any proposals that may result from this Request for Proposals (RFP) are valid for one year from proposal due date as indicated in Section 8, Contact Person, and Due Dates, below. ECAM may award multiple contracts as a result of this RFP.

The successful Offeror(s) shall assist ECAM with management and implementation of Section 50121, Home Efficiency Rebates Program of the IRA to optimize Department of Energy's (DOE) funding and guidance to manage and deploy the programs in an effective and efficient manner for disadvantaged, low-income and rural communities in New Mexico.

ECAM will conduct a non-mandatory pre-proposal conference for potential Offerors at **10:00 A.M. MDT on January 13, 2025** via Microsoft Teams to provide Offerors an opportunity to be briefed on this procurement and to ask questions about the procurement process and the Scope of Work (SOW). Please contact the ECAM Contact Person listed in Section 8, Contact Person and Due Dates, to request a meeting invitation or refer to Teams Meeting information below:

Microsoft Teams [Need help?](#)

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Meeting ID: 266 512 353 06

Passcode: o8bWXB

Dial in by phone

[+1 505-312-4308,,522254425#](#) United States, Albuquerque

[Find a local number](#)

Phone conference ID: 522 254 425#

Section 2. BACKGROUND INFORMATION

On Aug. 16, 2022, President Biden signed the IRA into law. The law includes the HER Program, which provides funding to support clean energy and address climate change, including rebate programs for home energy efficiency and electrification projects. These home energy rebates will help American households save money on energy bills, upgrade to clean energy equipment and improve energy efficiency, and reduce indoor and outdoor air pollution. DOE estimates that these rebates will save households up to one billion dollars on energy bills each year and support over 50,000 U.S. jobs. The DOE envisions that the Home Energy Rebates will help grow the equitable clean energy economy by scaling access to and demand for home energy upgrades for all. The mission of the DOE's Home Energy Rebates program team is to work with diverse market actors to leverage the unprecedented IRA investment in residential efficiency and electrification to develop, discover, and scale successful models for home energy upgrades.

The IRA also included the Home Electrification and Appliances Rebate (HEAR) Program (Section 50122). The State of New Mexico was the first state to apply for both rebate programs, and, with 50122, is the first state in the country to launch retail point-of-sale rebates— i.e., rebates at the cash register.

The State of New Mexico is focusing on delivering these energy-saving measures to New Mexico residents whose income is 80 percent or less of Area Median Income (AMI); or who otherwise already receive benefits under any of the DOE recognized programs [HERE](#).

ECAM already has an information technology consultant (Consultant) under contract that will be collaborating with the successful Offeror(s) of this RFP. That Consultant is building the back-end information technology infrastructure and the public-facing website. The successful Offeror(s) shall collaborate with this Consultant, as needed.

For more information visit the Energy.Gov website [HERE](#).

For FAQs about the DOE program, click [HERE](#).

Section 3. SCOPE OF WORK

The successful Offeror(s) shall assist ECAM with management and implementation of the HER Program by providing the following for the State of New Mexico on a Task Order basis after a contract is fully executed. Successful Offeror(s) shall provide ECAM with professional services relating to the HER programs' design, planning, technical and administrative aspects of implementation.

Successful Offeror(s) shall be capable of performing all services in the General Responsibilities as described in section I below, however Offeror(s) shall choose which

services they wish to submit a proposal for: SINGLE-FAMILY, MULTIFAMILY or BOTH. Offeror(s) shall indicate which tasks they are submitting for in Attachment 5 of their proposals.

GENERAL RESPONSIBILITIES:

1. The successful Offeror(s) shall be responsible for all efforts required to provide services in accordance with guidelines issued by the lead federal agency, such as DOE, and lead state agency, ECAM.
2. ECAM will provide technical assistance and overall project management through all phases of an identified project.
3. The successful Offeror(s) shall be aware of and comply with local, state and federal regulatory requirements connected with the work.
4. The successful Offeror(s) shall refer any media inquiries to ECAM.
5. The successful Offeror(s) shall comply with the following implementation procedures:
 - i. ECAM shall identify proposed tasks for which services are necessary and assign work on an “as-needed” basis under Task Orders. While ECAM anticipates the need to assign several Task Orders during the term of the contracts, ECAM cannot and does not predict or guarantee the number or frequency of Task Order assignments that the successful Offeror(s) may be asked to complete. ECAM at its sole discretion shall determine what work is assigned to which successful Offeror(s).
 - ii. ECAM shall issue Task Orders to include: 1) the purpose of the proposed undertaking; 2) a summary of the regulatory framework and description of the undertaking; 3) background information on the task; and 4) ECAM’s expectations for the successful Offeror(s) work products and a desired timeline for the delivery of those work products.
 - iii. Upon receipt of a Task Order, the successful Offeror(s) shall provide to ECAM a written narrative describing how the Task Order SOW will be met; a schedule describing time frames for completing the Task Order SOW; and a budget detailing the cost to complete the Task Order SOW, including equipment/vehicle usages, as well as the personnel, labor rates, and number of hours to be dedicated to the assignment, including any subcontractors. Personnel and subcontractor substitutions shall not occur without ECAM’s written approval.
 - iv. ECAM will review the successful Offeror(s)’ Task Order response and provide feedback. The successful Offeror(s) shall incorporate ECAM’s feedback into a revised Task Order. Upon ECAM’s acceptance of the revised Task Order, ECAM will issue a written notice to proceed with the Task Order.
 - v. The successful Offeror(s) shall provide ECAM Program Manager with regular written Task Order status reports for each request for payment,

- explaining the status of the Project and including, at a minimum, the amount of work completed and the amount of work remaining.
6. Jointly, ECAM, ECAM's consultants, and the successful Offeror(s) may use up to a combined 20 percent of HER funds for planning, administration, and technical assistance, but must not exceed 20 percent. ECAM encourages Offerors to keep Offeror(s)' administrative costs as low as possible. At least 80 percent combined of the HER funds must be used to provide single-family households and multifamily buildings with discounts for energy efficiency upgrades.

IMPLEMENTATION AND MANAGEMENT SERVICES FOR THE HER SINGLE-FAMILY PROGRAM:

The successful single-family Offeror(s) shall be responsible for some or all of the following tasks to successfully implement the HER Program, including but not limited to:

i. Planning and Design

- a) Review federal and state program requirements;
- b) review data and tools requirements;
- c) identify program's paths and high-level design strategy for implementation including timeline;
- d) conduct technical and financial analysis to support program design;
- e) provide recommendations for disposal of replaced or retrofitted appliances;
- f) assist ECAM with the development of a Community Benefits Plan;
- g) assist ECAM with the development of a Market Transformation Plan;
- h) assist ECAM with the development of a Consumer Protection Plan;
- i) assist ECAM with the development of a Utility Data Access Plan;
- j) assist ECAM with the development of an Education and Outreach strategy; and
- k) assist ECAM with the development of a Privacy and Security Risk Assessment.

ii. Community Outreach and Pre-launch Activities

In conjunction with ECAM:

- a) develop a written strategic plan for statewide community outreach including but not limited to: identifying meeting locations, drafting meeting agendas and sign-up sheets, developing information, marketing and education materials for homeowners, tenants, retailers, and contractors;
- b) determine the needs of residents, manufacturers, distributors, retailers and contractors as it relates to successful program implementation;

- c) integrate community feedback into the rebate program through revisions and enhancements; and
- d) conduct forecasts of energy savings.

iii. Implementation and Management of HER Program

- a) Implement the designed plan/strategy after ECAM review and approval;
- b) implement the DOE approved program for the State of New Mexico Program delivery using relevant tools developed by DOE and supporting entities such as the National Renewable Energy Laboratory (NREL) and the Pacific Northwest National Laboratory (PNNL), or as recommended by ECAM;
- c) follow the DOE’s Environmental Justice (EJ40) requirements;
- d) assist ECAM with income verification of applicants by following DOE approval guidelines for the appropriate Area Median Income (AMI) levels (e.g. below 80 percent AMI or as directed by ECAM) or means-tested benefit as listed in the DOE list of approved programs;
- e) ensure that renters have landlord permission to implement upgrades;
- f) conduct a utility bill risk assessment in each residence before the project begins to determine the risk of rising utility bills for single-family homes;
- g) conduct modeled energy savings projections using calibrated BPI-2400 standard to estimate energy savings prior to upgrades to achieve a minimum of 20 percent energy savings. Calculate rebates using the table below:

TABLE 1. MODELED SAVINGS REBATE LEVELS

Single-Family		
Modeled Energy Savings	Income Level	Rebate Amount
20%-34%	Less than 80% AMI*	Lesser of \$4,000 or 80% of project cost
	80% AMI and greater	Lesser of \$2,000 or 50% of project cost
35% and greater	Less than 80% AMI*	Lesser of \$8,000 or 80% of project cost
	80% AMI and greater	Lesser of \$4,000 or 50% of project cost

- h) consider alternative approaches to BPI-2400 for modeled energy savings for those households lacking the conditions for BPI-2400;
- i) issue rebates for qualifying projects completed after August 16, 2022;
- j) assist ECAM with data gathering, DOE reporting and analysis;
- k) provide a consumer protection plan that includes customer service, installation of equipment according to installation requirements and

specifications, reasonable charges for installation; and warranties for equipment installed;

- l) ensure that Energy Star equipment is installed correctly and to specification;
- m) track rebates in collaboration with ECAM's information technology consultant and DOE approved systems;
- n) maintain invoices that include address where work was performed, name and contact information of contractor/installer performing the work, date on which the work was performed, and total project cost excluding rebate, and rebate amount;
- o) ensure that individual addresses do not receive multiple rebates for the same measure (for 50121 and 50122);
- p) quality control for applications submitted and project completion to ensure proper installation of equipment per DOE guidance;
- q) onsite inspections of a minimum of the first five projects of each new installation contractor and five percent of projects thereafter for each contractor, to comply with program requirements;
- r) upon request from EMNRD, take and retain geotagged post-installation photos of major appliances installed; and
- s) track progress of milestones and rebates redeemed.

iv. Training and Managing Contractors for the HER Program

- a) Partner with underrepresented businesses and training organizations that serve workers who face barriers to accessing quality jobs, and/or other project partners, to help address diversity, equity, inclusion and accessibility;
- b) develop trainings for contractors and offer certification(s) for this program;
- c) develop and maintain a list of certified contractors;
- d) manage contractors including but not limited to: review contractor invoices, negotiate costs of projects; manage contractor implementation and management of incentives;
- e) ensure contractors follow the appliance installation standards;
- f) provide technical assistance for homeowners, ECAM, DOE, contractors, and vendors as needed;
- g) as needed, "front" funds to remit payment to contractors and vendors in a timely manner; such funds will be reimbursed by EMNRD;
- h) issue post-installation certificates; and
- i) identify and address contractors who are non-compliant and remove them from the list of certified contractors if necessary.

v. Monitoring, Post-Implementation Assessments and Customer Service

- a) Conduct periodic assessments of the HER Program to address deficiencies and achieve continuous improvement;

- b) coordinate with utilities to request energy consumption data;
- c) in conjunction with existing ECAM IT provider, collect household data and metrics required by DOE;
- d) collect home energy assessment data consistent with **BuildingSync**, in appropriate format to be shared with DOE;
- e) share data to help track market transformation;
- f) conduct customer satisfaction surveys as requested by ECAM;
- g) implement resolution procedures for disputes;
- h) ensure that owners of units occupied by renters agree to and comply with DOE requirements for two years following rebates by obtaining signed agreements.

vi. Collaboration with Other Entities

- a) Collaborate with ECAM's existing information technology consultant to successfully develop and implement the HER Program, including integrating the HER Program with other ECAM programs as directed by ECAM;
- b) collaborate with energy coaches when necessary and as instructed by ECAM; and
- c) coordinate with other state agencies, as directed by ECAM, to facilitate income verification or participation in means-tested benefits, outreach, contractor training, etc.
- d) coordinate with EMNRD on a one-stop shop clearinghouse website and customer call center, jointly funded by several EMNRD programs;
- e) coordinate with ECAM's other implementer(s) to "braid and stack" available programs in addition to 50121 and 50122;

vii. Miscellaneous

- a) Provide ongoing administrative support;
- b) support ECAM with reporting to DOE;
- c) provide regular project updates as requested by ECAM;
- d) assist ECAM to ensure successful program implementation;
- e) integrate HER program with other utility, state, or non-duplicating federal benefit programs, and
- f) follow best practices for continuous improvement and provide documentation of such to ECAM.

IMPLEMENTATION AND MANAGEMENT SERVICES FOR THE HER MULTIFAMILY PROGRAM

The successful multifamily Offeror(s) shall be responsible for some or all of the following to successfully implement the HER Program, including but not limited to:

i. Planning and Design

- a) Review federal and state program requirements;
- b) review data and tools requirements;
- c) identify program's paths and high-level design strategy for implementation including timeline;
- d) conduct technical and financial analysis to support program design;
- e) provide recommendations for disposal of replaced or retrofitted appliances;
- f) assist ECAM with the development of a Community Benefits Plan;
- g) assist ECAM with the development of a Market Transformation Plan;
- h) assist ECAM with the development of a Consumer Protection Plan;
- i) assist ECAM with the development of a Utility Data Access Plan;
- j) assist ECAM with the development of an Education and Outreach strategy; and
- k) assist ECAM with the development of a Privacy and Security Risk Assessment.

ii. Community Outreach and Pre-launch Activities

In conjunction with ECAM:

- a) develop a strategic plan for statewide community outreach, including but not limited to: identifying meeting locations, drafting meeting agendas and sign-up sheets, developing information, marketing and education materials for homeowners, tenants, retailers, and contractors;
- b) determine the needs of residents, manufacturers, distributors, retailers and contractors as it relates to successful program implementation;
- c) integrate community feedback into the rebate program through revisions and enhancements; and
- d) conduct forecasts of energy savings.

iii. Implementation and Management of HER Program

- a) Implement the designed plan/strategy after ECAM review and approval;
- b) implement the DOE approved program for the State of New Mexico Program delivery using all tools developed by DOE and supporting entities such as NREL and PNNL, or as recommended by ECAM;
- c) follow the DOE's Environmental Justice (EJ40) requirements;
- d) determine if a multifamily building qualifies as a low-income building (50 percent of households with incomes less than 80 percent AMI);
- e) ensure that renters have landlord permission to implement upgrades;

- f) conduct a utility bill risk assessment before the project begins to determine the risk of rising utility bills for multifamily buildings;
- g) conduct modeled energy savings projections using calibrated BPI-2400 standard to estimate energy savings prior to upgrades to achieve a minimum of 20 percent energy savings. Calculate rebates using the table below:

TABLE 2. MODELED SAVINGS REBATE LEVELS

Multifamily		
Modeled Energy Savings	Income Level	Rebate Amount
20%-34%	A building with at least 50% of households with incomes less than 80% AMI*	Lesser of \$4,000 per dwelling unit or 80% of project cost
	A building with at least 50% of households with incomes 80% AMI and greater	\$2,000 per dwelling unit up to \$200,000 per building
Greater than 35%	A building with at least 50% of households with incomes less than 80% AMI *	Lesser of \$8,000 per dwelling unit or 80% of project cost
	A building with at least 50% of households with incomes 80% AMI and greater	\$4,000 per dwelling unit up to \$400,000 per building

- h) consider alternative approaches to BPI-2400 for modeled energy savings for those households that do not have conditions for BPI-2400;
- i) issue rebates for qualifying completed projects after August 16, 2022;
- j) assist ECAM with data gathering, DOE reporting and analysis;
- k) provide a consumer protection plan that includes customer service, installation of equipment according to installation requirements and specifications, reasonable charges for installation; and warranties for equipment installed;
- l) ensure that Energy Star equipment is installed correctly and to specification;
- m) track rebates in collaboration with ECAM's existing information technology consultant and DOE-approved systems;
- n) maintain invoices that must include address where work was performed, name and contact information of contractor/installer performing the work, date on which the work was performed, and total project cost excluding rebate, and rebate amount;

- o) ensure that individual addresses do not receive multiple rebates for the same measure (for 50121 and 50122);
- p) quality control for applications and project competition to ensure proper installation of equipment per DOE guidance;
- q) onsite inspections of a minimum of the first five projects of new installation contractors and five percent of project thereafter for each contractor that shall comply with program requirements;
- r) when requested by ECAM, take geotagged post-installation photos of major appliances installed; and
- s) track progress of milestones and rebates redeemed.

iv. Training and Managing Contractors for the HER Program

- a) Partner with underrepresented businesses and training organizations that serve workers who face barriers to accessing quality jobs and/or other project partners to help address diversity, equity, inclusion, and accessibility.
- b) develop trainings for contractors and offer certification(s) for this program;
- c) develop and maintain a list of certified contractors and upload to online platform;
- d) contractor management including but not limited to: review contractor invoices, negotiation of costs of projects; implement and management of incentives;
- e) ensure contractors follow the appliance's installation standards;
- f) provide technical assistance for property owners, ECAM, DOE and other stakeholders as needed;
- g) as needed, "front" funds to remit payment to contractors and vendors for used rebate/coupons in a timely manner; such funds will be reimbursed by EMNRD;
- h) issue post-installation certificate; and
- i) identify and address contractors who are non-compliant and remove them from the list of certified contractors if necessary.

v. Monitoring, Post-Implementation Assessments and Customer Service

- a) conduct assessments to address deficiencies of the HER Program to achieve continuous improvement;
- b) coordinate with utilities to obtain energy consumption data;
- c) in conjunction with existing ECAM IT provider, collect property data and metrics required by DOE;
- d) collect property energy assessment data consistent with BuildingSync; in appropriate format to be shared DOE;
- e) data sharing to help track market transformation;
- f) conduct customer satisfaction surveys as requested by ECAM;

- g) implement resolution procedures for disputes;
- h) ensure that owners of units occupied by renters agree to DOE requirements following two years of the rebates.

vi. Collaboration with Other Entities

- a) Collaborate with ECAM's existing information technology consultant to develop an effective integration and implementation of HER Program;
- b) collaborate with energy coaches when necessary and as instructed by ECAM;
- c) coordinate with other state agencies to facilitate income verification and/or participation in means-tested benefits; and
- d) integrate IRA program with other utility, state, or non-duplicating federal benefit programs;
- e) coordinate with EMNRD on a one-stop shop clearinghouse website and customer call center, jointly funded by several EMNRD programs;
- f) coordinate with ECAM's other implementer(s) to "braid and stack" available programs in addition to 50121 and 50122;

vii. Miscellaneous

- a) Provide ongoing administrative support;
- b) support ECAM with reporting to DOE;
- c) provide regular project updates as requested by ECAM;
- d) assist ECAM with any other relevant activities for successful implementation;
- e) integrate IRA program with other utility, state, or non-duplicating federal benefit programs; and
- f) follow best practices for continuous improvement and provide documentation of such to ECAM.

DELIVERABLES:

Successful Offeror(s) shall render deliverables as requested by ECAM. Deliverables may include technical reports resulting from data gathered, financial reports, maps in CADD or ArcGIS format, presentations, and outreach materials. Deliverables must be delivered in native format (.doc, .dwg, etc.).

Section 4. PROPOSAL CONTENTS

Offeror must indicate if proposal is for the single-family program, multifamily building program, or both. Proposals must contain sufficient information to provide ECAM with a thorough description of Offeror's qualifications to accomplish the activities described in

the Scope of Work. All proposals shall be in electronic PDF format in single-spaced, 12-point type. The proposal MUST contain, at a minimum, all listed items in the sequence indicated below and be organized in the following format:

- A. Letter of transmittal that:
 - identifies the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror(s);
 - identifies the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
 - identifies Offeror's SAM.gov Unique Entity ID number;
 - identifies Offeror's New Mexico Business Tax Identification Number (BTIN), or a statement certifying that offeror will obtain a BTIN immediately and provide it to ECAM if selected;
 - explicitly indicate acceptance of the terms and conditions of this RFP and its evaluation factors;
 - acknowledges receipt of all amendments to this RFP; and
 - is signed by the person authorized to contractually obligate the Offeror(s).

- B. A table of contents.

- C. A budget proposal including hourly rates.

- D. A statement of financial stability or an equivalent document from a financial institution showing financial stability.

- E. A filled-out 2024 W-9 form with a wet signature **or** electronic signature with DocuSign only.

- F. Up to three written narratives of past relevant projects or experience as it relates to the SOW. These narratives must show name of project, client, length of project, cost/budget and schedule control, name of project manager, braiding and stacking of other programs, collaboration with other entities, location of the project and description of the project. The written narratives must show record of past performance with respect to such factors as control of costs, quality of work, and ability to meet schedules and challenges; how the project shows expertise and experience in working in the Southwestern US.

- G. A narrative on how the SOW will be achieved. The narrative shall address the following, including but not limited to:
 - i. overall strategy for ensuring efficient and effective implementation of the IRA Rebates Program including how to identify eligible

- households, eligible upgrades, income verification methods, EJ40 requirements, rebate amounts and projected caps;
 - ii. outreach communication strategies with stakeholders and potential applicants;
 - iii. plans for addressing potential challenges that may arise during implementation;
 - iv. how to ensure equitable access to rebates for low-income communities;
 - v. plan for tracking and reporting on progress and impacts,
 - vi. how contractors will be trained, selected and, if necessary, removed from approved lists;
 - vii. quality control measures to assure compliance with HER Program standards;
 - viii. ensuring efficient and effective use of funds, and plan to keep administrative costs 20% or lower;
 - ix. data collection and reporting methods;
 - x. strategies for collaborating with multiple stakeholders including other state agencies, DOE, media, IT services and energy coaches; and
 - xi. indicate key personnel, specific roles and experience, Professional Seal/Certificate Number; identify lines of authority and limits of capacity of each member of the team, delineate roles of subconsultants, if any.
- H. Offeror(s) must complete and sign the Campaign Contribution Disclosure Form (Attachment 1) and disclose whether the Offeror(s), a family member, or a representative of the Offeror(s) has made a campaign contribution to an applicable public official during the two years prior to the RFP. The Offeror(s) shall complete the non-disclosure statement or make separate disclosures for all campaign contributions given by (1) the Offeror(s), (2) a family member, or (3) a representative of the Offeror(s).
- I. Completed, signed Statement of Assurances Form (Attachment 2).
- J. Completed, signed Proposal Category Form (Attachment 5).
- K. Offeror(s) must also provide three business references from similar projects performed for private, state, tribal, or large local government clients within the last three years. Offerors are required to submit Attachment 3, Reference Questionnaire, to the business references they list. The business references must submit the Reference Questionnaire directly to the EMNRD Contact Person listed in Section VIII below. Offerors are responsible for ensuring that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received, or are not complete, may adversely affect the Offeror's score in the evaluation

process. The Evaluation Team may contact any or all business references for validation of information submitted.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Section 5. CRITERIA AND EVALUATION POINT SUMMARY

The Evaluation Team shall use the following criteria in the evaluation of proposals and in the selection of Successful Offeror(s):

No.	Evaluation Factor	Points Available
1.	<p>Project Approach and Technical Capabilities</p> <p>Points will be awarded on the Offeror’s detailed, effective, creative and efficient implementation approach of the HER Program’s SOW, especially as it relates to keeping administrative costs as low as possible (lower administration costs = more rebates for low-income New Mexicans). The Offeror must demonstrate understanding of the purpose and scope of the program, including the approach for successful and timely launch.</p>	40
2.	<p>Record of Past Performance</p> <p>This criterion considers the Offeror’s past experience with similar DOE programs (for example: solar rebates program), government agencies, or private industry with respect to such factors as control of costs, quality of work, training approaches, braiding and stacking of programs, and ability to meet schedules.</p>	30
3.	<p>Capacity and Capability</p> <p>Points will be awarded on the Offeror’s ability to achieve the SOW; good financial standing; key personnel, specific roles and experience, Professional Seal/Certificate Number; lines of authority and limits of capacity of each member of the team, and roles of subconsultants, if any.</p>	20
4.	<p>Proximity and Familiarity</p> <p>This criterion considers Offeror’s proximity and familiarity with the southwestern United States, and the awarded number of points will be determined by the Offeror’s and any subconsultant’s expertise and experience on projects in the southwestern part of the U.S. as they relate to the SOW.</p>	7
5.	References	3

No.	Evaluation Factor	Points Available
	Points will be awarded based upon an evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints and the level of satisfaction with the Offeror(s) overall performance (See Attachment 3 and 4, Reference Questionnaire).	
Total Possible		100

Section 6. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. Three Evaluation Team members will document contents of competitive sealed proposals after the submittal deadline.
2. The Evaluation Team will review proposals for compliance with the mandatory requirements stated within this RFP. Proposals deemed non-responsive will be eliminated from further consideration.
3. The Contact Person may contact the Offeror(s) for clarification of the proposal.
4. The Evaluation Team will evaluate responsive proposals based on the criteria in Section 5, Criteria and Evaluation Point Summary, and will select responsive Offeror(s) with the highest total weighted scores as finalist Offeror(s). The Evaluation Team will consult with listed references and select the finalist Offeror(s) whose proposal and references is most advantageous to ECAM, for award.

Please note, however, that a deficiency in any one factor may be grounds for rejection regardless of overall score.

SECTION 7. AWARD AND CONTRACT DURATION

EMNRD may award multiple contracts under the terms of the attached draft Professional Services Agreement (PSA) (Attachment 6) and in accordance with this RFP. Any PSA (Attachment 6) awarded as a result of this RFP shall not be binding until approved by both EMNRD and the General Services Department, State Purchasing Division, Contracts Review Bureau (CRB). Award of a PSA does not obligate EMNRD to award any work to the successful Offeror. The contract period may extend from the date of contract approval by CRB and encumbrance of the funds, for no longer than four years, including amendments.

Section 8. CONTACT PERSON and DUE DATES

The Division Contact Person is:

Yeny Maestas
Energy Conservation and Management Division
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Yeny.Maestas@emnrd.nm.gov
Telephone: (505) 795-2381

Offerors shall submit one proposal per category, bearing digital signatures in PDF format, to Yeny Maestas by e-mail no later than 3 p.m. MST on January 23, 2025. Proposals must be submitted in the format specified above in Section 4, Proposal Contents. Proposals must be received by the stated date and time to be considered. Yeny Maestas shall reply via email to each proposal, indicating it has been received. ECAM shall not accept proposals submitted after the due date and shall make absolutely no exceptions for proposals not received by the appointed time.

DEADLINES FOR WRITTEN QUESTIONS

Offerors may submit written questions to the Contact Person as to the intent or clarity of this RFP January 16, 2025 at 3 p.m. All written questions must be addressed to the Contact Person as indicated above. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

ECAM will post written responses to such questions on the ECAM as amendments on the website:

<https://www.emnrd.nm.gov/ECAM/about-us/requests-for-proposals-applications/>

PROTEST PERIOD

Pursuant to NMSA 1978, § 13-1-172 and applicable procurement rules, Offerors who are not selected for funding have the right to timely protest the procurement. Protests must be written and must include: the name and address of the protestor and the name of the procurement being protested; a statement of the grounds for protest including appropriate supporting exhibits; and the ruling requested from the Division. The protest period begins on the day after notice of selection/non-selection and ends at 5 p.m. 15 days later. Protests must be delivered to:

Rebecca Stair, Division Director,
EMNRD, Energy Conservation and Management Division,
1220 S. St. Francis Drive, Santa Fe, NM 87505.
E-Mail: Rebecca.Stair@emnrd.nm.gov

Section 9. NOTICES

Award of agreements is contingent upon sufficient appropriations and authorization being made by the State of New Mexico and DOE.

The money made available to support any PSA entered into as a result of this RFP must cover Gross Receipts Taxes or Governmental Gross Receipts Taxes as a component of the total contractual amount.

EMNRD may cancel this RFP and reject any and all proposals when it is in the State of New Mexico's best interests.

EMNRD may conduct discussions with Offerors who submit proposals but may also accept proposals without such discussions.

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

Attachment 1

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, *et seq.*, NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or

unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Note: A prospective contractor shall make **separate** disclosures of all campaign contributions given by (1) the prospective contractor, or (2) a family member or (3) representative of the prospective contractor, or shall complete the non-disclosure statement, as applicable.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By:			
Relation to Prospective Contractor:			
Name of Applicable Public Official:		Governor Michelle Lujan Grisham	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature: _____ Date: _____

Title/Position: _____

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature: _____

Date: _____

Title/Position: _____

Attachment 2

Statement of Assurances Form

Each Offeror MUST complete this form and return it with Offeror's proposal or EMNRD will deem the proposal as non-responsive. By signing this form below, Offeror acknowledges and agrees to the following:

This RFP does not commit the State of New Mexico (State) to pay any costs incurred in the in the preparation or submission of this proposal. Any cost incurred by the Offeror in developing a proposal response shall be borne solely by the Offeror. Offeror understands that that Offeror's proposal shall become part of the official file on this matter without obligation to the State. Issuance of this RFP does not constitute an award commitment on the part of the State.

Offeror shall examine all contract documents, noting particularly all stipulations that in any way affect contract work. Failure of an Offeror to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents shall not be considered a basis for extra compensation after a contract has been awarded.

Offeror represents and warrants to the State that Offeror has the staff, facilities, and competence to furnish the required services. The State may investigate Offeror's adequacy of the staff, facilities, and competence. For this purpose, representatives of the State may inspect Offeror's facilities, equipment, etc., and interview staff.

To receive consideration, Offeror's proposal must be signed by an officer having the authority to bind Offeror.

Offeror agrees to comply with all relevant federal and state laws and regulations or rules.

New Mexico Employees Health Coverage:

If Offeror has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of any Agreement which may result from this RFP, Offeror agrees, by submitting a proposal, to have in place, and agrees to maintain for the Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Offeror and the state exceed \$250,000.

Offeror agrees to maintain a record of the number of employees who have:

- 1) accepted health insurance;
- 2) declined health insurance due to other health insurance coverage already in place; or
- 3) declined health insurance for other reasons.

These records are subject to review and audit by a representative of the State.

Offeror agrees to advise all employees of the availability of state publicly financed health care coverage programs.

Application of Resident Preference and Veterans Preference (NMSA 1978, Sections 13-1-21 and 22):

Offeror acknowledges Offeror must provide a copy of either the Resident Preference or Veterans Preference Certificate to be eligible for preference points.

Offeror Signature

Date:

Offeror's Printed Name and Title: _____

**Attachment 3
Reference Questionnaire**

**REQUEST FOR PROPOSALS
FOR PROVIDING AS-NEEDED SERVICES FOR THE HOME EFFICIENCY REBATES PROGRAM
FOR SINGLE-FAMILY HOMES (SECTION 50121)
IN NEW MEXICO
ISSUED BY THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
ENERGY CONSERVATION AND MANAGEMENT DIVISION**

REFERENCE QUESTIONNAIRE

**Name of Individual/Entity
Requesting Reference:**

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to Yeny Maestas, Energy Conservation and Management Division, by email at Yeny.Maestas@emnrd.nm.gov no later than 3 p.m. January 9, 2025.

For questions or concerns regarding this form, please contact the Procurement Manager listed above.

**Name of Individual/Entity
Providing Reference:**

**Contact Name and
Title/Position:**

**Contact Telephone
Number:**

Contact E-Mail Address:

QUESTIONS

1. In what capacity have you worked with this Offeror in the past? (Please explain)

2. How would you rate this Offeror's knowledge and expertise? (Check one)

3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
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Comments:

3. How would you rate the Offeror's flexibility relative to changes in the project scope and timelines? (Check one)

3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
---------------------	------------------------	--------------------------	------------------------

Comments:

**REQUEST FOR PROPOSALS
FOR PROVIDING AS-NEEDED SERVICES FOR THE HOME EFFICIENCY REBATES PROGRAM
FOR SINGLE-FAMILY HOMES (SECTION 50121)
IN NEW MEXICO
ISSUED BY THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
ENERGY CONSERVATION AND MANAGEMENT DIVISION**

REFERENCE QUESTIONNAIRE

4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
5. How would you rate the dynamics/interaction between the Offeror and your staff? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
6. Who were the Offeror’s principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors, or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)			
Principal Representative Name:		Rating: _____	
Principal Representative Name:		Rating: _____	
Principal Representative Name:		Rating: _____	
Principal Representative Name:		Rating: _____	
Comments:			
7. How satisfied are you with the products developed by the Offeror? (Check one)			
3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
Comments:			
8. With which aspect(s) of the Offeror’s services are you most satisfied? (Please explain)			
9. With which aspect(s) of the Offeror’s services are you least satisfied? (Please explain)			
10. Would you recommend this vendor's services to your organization again? (Please explain)			

**Attachment 4
Reference Questionnaire**

**REQUEST FOR PROPOSALS
FOR PROVIDING AS-NEEDED SERVICES FOR THE HOME EFFICIENCY REBATES PROGRAM
FOR MULTIFAMILY BUILDINGS (SECTION 50121)
IN NEW MEXICO
ISSUED BY THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
ENERGY CONSERVATION AND MANAGEMENT DIVISION**

REFERENCE QUESTIONNAIRE

**Name of Individual/Entity
Requesting Reference:**

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

This form is being submitted to you for completion as a business reference for the individual or entity above. Please return this completed form directly to Yeny Maestas, Energy Conservation and Management Division, by email at Yeny.Maestas@emnrd.nm.gov no later than 3 p.m. January 9, 2025.

For questions or concerns regarding this form, please contact the Procurement Manager listed above.

**Name of Individual/Entity
Providing Reference:**

**Contact Name and
Title/Position:**

**Contact Telephone
Number:**

Contact E-Mail Address:

QUESTIONS

1. In what capacity have you worked with this Offeror in the past? (Please explain)

2. How would you rate this Offeror's knowledge and expertise? (Check one)

3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
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Comments:

3. How would you rate the Offeror's flexibility relative to changes in the project scope and timelines? (Check one)

3 – Excellent _____	2 – Satisfactory _____	1 – Unsatisfactory _____	0 – Unacceptable _____
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Comments:

**REQUEST FOR PROPOSALS
 FOR PROVIDING AS-NEEDED SERVICES FOR THE HOME EFFICIENCY REBATES PROGRAM
 FOR MULTIFAMILY BUILDINGS (SECTION 50121)
 IN NEW MEXICO
 ISSUED BY THE STATE OF NEW MEXICO,
 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
 ENERGY CONSERVATION AND MANAGEMENT DIVISION**

REFERENCE QUESTIONNAIRE

4. What is your level of satisfaction with hard-copy materials produced by the Offeror? (Check one)

3 – Excellent _____ 2 – Satisfactory _____ 1 – Unsatisfactory _____ 0 – Unacceptable _____

Comments:

5. How would you rate the dynamics/interaction between the Offeror and your staff? (Check one)

3 – Excellent _____ 2 – Satisfactory _____ 1 – Unsatisfactory _____ 0 – Unacceptable _____

Comments:

6. Who were the Offeror’s principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors, or other factors on which you based the rating? (3 – Excellent; 2 – Satisfactory; 1 – Unsatisfactory; 0 – Unacceptable)

Principal Representative Name: _____ Rating: _____

Principal Representative Name: _____ Rating: _____

Principal Representative Name: _____ Rating: _____

Principal Representative Name: _____ Rating: _____

Comments:

7. How satisfied are you with the products developed by the Offeror? (Check one)

3 – Excellent _____ 2 – Satisfactory _____ 1 – Unsatisfactory _____ 0 – Unacceptable _____

Comments:

8. With which aspect(s) of the Offeror’s services are you most satisfied? (Please explain)

9. With which aspect(s) of the Offeror’s services are you least satisfied? (Please explain)

10. Would you recommend this vendor’s services to your organization again? (Please explain)

ATTACHMENT 5
Proposal Category

Please check the category of work which the Offeror proposes to perform:

() I propose to perform implementation services for single-family homes for the HER Program (50121).

() I propose to perform implementation services for multifamily buildings for the HER Program (50121).

() I propose to perform implementation services for both single family homes for the HER Program and multifamily buildings for the HER Program (50121).

Offeror Name

Signature

Date

Print Name

Title

Address

Email

Telephone No./Cell No

Fax No.

THIS PAGE SHALL NOT BE ALTERED.

Attachment 6

**STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
PROFESSIONAL SERVICES AGREEMENT (AGREEMENT)**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) and (insert Contractor Name) (Contractor), and is effective as of the date set forth below upon which it is executed by the General Services Department, State Purchasing Division (GSD/SPD), Contracts Review Bureau.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

Contractor shall perform the following work:

(Insert Scope of Work here.)

2. Compensation.

Option 1: Work Product.

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed _____ (\$ _____), which amount includes travel and New Mexico gross receipts taxes pursuant to Paragraphs C and D of this Compensation Section (if travel is negotiated. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item. If travel is not paid, remove reference to travel.). EMNRD shall make payment upon the satisfactory and timely completion of the work described in the Scope of Work and for no more than the maximum amount set forth below for each deliverable:

(Insert deliverables/payment schedule here. Delete this instruction.)

In no event shall Contractor be paid for services provided or travel expenses exceeding the total compensation amount without this Agreement being amended in writing prior to those services or expenses exceeding the total compensation amount being provided.

(—OR—)

Option 2: Lump Sum Amount Upon Completion of All Work.

A. Upon satisfactory completion of services, EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed _____ (\$ _____), which amount includes New Mexico gross receipts taxes.

Option 3: Time and Materials. Travel may or may not be paid, depending on negotiation between EMNRD and Contractor.

A. EMNRD shall pay to Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work rendered at the rate of \$_____ per hour, such compensation not to exceed \$_____, which amount includes travel and New Mexico gross receipts taxes, pursuant to Paragraphs C and D of this Compensation Section. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying EMNRD when the services provided under this Agreement reach the total compensation amount. In no event will Contractor be paid for services provided exceeding the total compensation amount without this Agreement being amended in writing prior to those services exceeding the total compensation amount being provided.

B. (For single-year contract, may need to tweak the first sentence.) Payment in FYXX, FYXX, and FYXX is subject to availability of funds pursuant to Section 5, Appropriations, set forth below and to any negotiations between the parties from year to year pursuant to Section 1, Scope of Work, and to approval by GSD/SPD. EMNRD must receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. (To be negotiated at EMNRD's discretion. Travel payment language does not apply when choosing to pay Contractor on a lump sum basis. Travel payment language also does not apply when paying on a deliverables basis unless the travel is set out as a separate item.) EMNRD shall pay such travel expenses as may be incurred, and that are necessary for, the performance of this Agreement at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1 *et seq.*, as implemented by the current Department of Finance and Administration rule and the current EMNRD travel policy.

D. Contractor is responsible for paying New Mexico Gross Receipts taxes levied on amounts payable under this Agreement.

E. Contractor must submit detailed invoices accounting for all services performed, and expenses incurred. Invoices evidencing the propriety of each claim for payment must be supported by approved purchase order. (When compensation is based on hourly rates, Contractor shall also provide documentation of hours expended on the services provided.) If EMNRD finds that the invoiced services, or expenses are not acceptable, within 30 days of receipt of written notice from Contractor that payment is requested for services received, EMNRD shall provide Contractor a letter of exception explaining the defect or objection to the invoice, services, or expenses, and outlining steps Contractor may take to provide remedial action. Upon certification by EMNRD that the invoice, services, or expenses have been received and accepted, EMNRD shall tender payment to Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on (DATE) unless terminated pursuant to Section 4, Termination, or Section 5, Appropriations. In accordance with

NMSA 1978, Section 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, Section 13-1-150.

4. Termination.

A. EMNRD.

1) EMNRD may terminate this Agreement for convenience or cause by giving written notice to Contractor at least 30 days prior to the intended date of termination, except that EMNRD may terminate this Agreement immediately by giving written notice to Contractor if (i) Contractor becomes unable to perform the services contracted for as determined in the sole discretion of EMNRD; (ii) during the term of this Agreement, Contractor is suspended or debarred by the State Purchasing Agent; (iii) this Agreement is terminated pursuant to Section 5, Appropriation, of this Agreement; or (iv) this Agreement is terminated pursuant to Section 12, Conflict of Interest; Governmental Conduct Act. (May need to revise Section number to track actual contract contents.)

2) Except as otherwise expressly allowed or provided by this Agreement, EMNRD's sole liability upon termination shall be to pay for acceptable work performed prior to Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. This provision is not exclusive and does not waive EMNRD's other legal rights and remedies caused by Contractor's default/breach of this Agreement.

B. Contractor.

1) Contractor may terminate this Agreement only based upon EMNRD's uncured, material breach of this Agreement.

2) Contractor shall give EMNRD written notice of termination at least 30 days prior to the intended date of termination, which notice shall (i) identify EMNRD's alleged material breaches of this Agreement upon which the termination is based and (ii) state what EMNRD must do to cure such material breaches. Contractor's notice of termination shall only be effective if (i) EMNRD does not cure all material breaches within the 30 day notice period or (ii) in the case of material breaches that cannot be cured within 30 days, EMNRD does not, within the 30 day notice period, notify Contractor of EMNRD's intent to cure and begin with due diligence to cure the material breach.

C. Termination Management. Immediately upon receipt by either EMNRD or Contractor of notice of termination of this Agreement, Contractor shall:

1) not incur any further obligations for salaries, services, or any other expenditure of funds under this Agreement without EMNRD's written approval;

2) comply with all directives EMNRD issues in the notice of termination as to the performance of work under this Agreement; and

3) take such action as EMNRD directs for the protection, preservation, retention, or transfer of all property titled to EMNRD and records generated under this Agreement. Any non-

expendable personal property or equipment provided to or purchased by Contractor with contract funds shall become property of EMNRD upon termination and shall be submitted to EMNRD as soon as practicable. **(If federal funding is involved, include the following clause. If not, delete it.)** Otherwise, all property procured under this Agreement shall be used and disposed of in accordance with (insert name of federal funding entity) regulations.

4) Contractor shall submit an invoice for work performed prior to Contractor's receipt or issuance of a notice of termination no later than 30 days after receiving or sending a notice of termination.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico and (insert name of federal funding entity) for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and (insert name of federal funding entity), this Agreement shall terminate immediately upon written notice being given by EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final. If EMNRD proposes an amendment to the Agreement to unilaterally reduce funding, Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within 30 days of receipt of the proposed amendment.

6. Status of Contractor.

Contractor and its subcontractors, agents, and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. Contractor acknowledges that all sums received hereunder are reportable by Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor has no authority to bind and shall not bind the State of New Mexico unless expressly authorized in writing by the State of New Mexico, and then only within the strict limits of that authority.

7. Assignment.

Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without EMNRD's prior written approval.

8. Subcontracting.

Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of EMNRD. No such subcontract shall relieve Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment by EMNRD.

Option: Include A, B, and C if you are using federal funds for the work of this contract. Remove this instruction.

A. Contractor shall comply with 2 C.F.R. 200.318 through 200.326 for procurement of services or property conducted pursuant to this Agreement.

B. Contractor is required to provide EMNRD with evidence of competitive procurement for any subcontract, including records of advertisement of bid, proposals received, and methods to select each subcontractor.

C. Any subcontract agreement shall include all provisions necessary to allow Contractor to meet its obligations and requirements under this Agreement and all provisions required by law.

Option: Include subparagraph below if subcontractor will be reimbursed for travel expenses. Remove instruction.

D. Travel expense reimbursement requested for subcontractors, if applicable, shall be reimbursed in accordance with rates established in the Per Diem and Mileage Act, NMSA 1978, Section 10-8-1 *et seq.*, as implemented by the current DFA Rule and EMNRD Travel Policy.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of EMNRD, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by Contractor in the performance of this Agreement shall be kept confidential by Contractor and shall not be made available to any individual or organization by Contractor without EMNRD's prior written approval.

11. Product of Service -- Copyright.

All materials developed or acquired by Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to EMNRD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of Contractor.

12. Conflict of Interest; Governmental Conduct Act.

A. Contractor represents and warrants that Contractor presently has no interest and, during this Agreement's term, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. Contractor further represents and warrants that Contractor has complied with, and, during this Agreement's term, shall continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18. Without in anyway limiting the generality of the foregoing, Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, Section 10-16-4.3, Contractor does not employ, has not employed, and will not employ during the term of this Agreement any EMNRD employee while such employee was or is employed by EMNRD and participating directly or indirectly in EMNRD's contracting process;

2) this Agreement complies with NMSA 1978, Section 10-16-7(A) because (i) Contractor is not a public officer or employee of the State of New Mexico (State); (ii) Contractor is not a member of the family of a public officer or employee of the State; (iii) Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, Section 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, Section 10-16-8(A), (i) Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in EMNRD's making this Agreement;

4) this Agreement complies with NMSA 1978, Section 10-16-9(A) because (i) Contractor is not a legislator; (ii) Contractor is not a member of a legislator's family; (iii) Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, Section 10-16-9(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, Section 10-16-13, Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, Section 10-16-3(D), Contractor has not contributed, and during this Agreement's term shall not contribute, anything of value to a public officer or employee of EMNRD.

C. Contractor's representations and warranties in Paragraphs A and B of this Section 12 are material representations of fact upon which EMNRD relied when EMNRD and Contractor entered this Agreement. Contractor shall provide immediate written notice to EMNRD if, at any time during this Agreement's term, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Section 12 were erroneous on this Agreement's effective date or have become erroneous by reason of new or changed circumstances occurring after this Agreement's effective date. If EMNRD later determines that Contractor's representations and warranties in Paragraphs A and B of this Section 12 were erroneous on this Agreement's effective date, or have become erroneous by reason of new or changed circumstances occurring after this Agreement's effective date, in addition to other remedies available to EMNRD and notwithstanding anything in this Agreement to the contrary, EMNRD may immediately terminate this Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Section 12.

13. Amendment.

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and all other required signatories.

14. Merger.

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement, covenant, or understanding of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for Violation of Law.

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

16. Equal Opportunity Compliance.

Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to New Mexico's choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G). By execution of this Agreement, Contractor acknowledges and agrees to the exclusive jurisdiction of the courts of the State of New Mexico over all lawsuits arising under or out of this Agreement's terms.

18. Records and Financial Audit.

Contractor shall maintain time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them for a period of six years from the date of final payment under this Agreement. EMNRD shall have the right to audit time and expenditure records both before and after payment, and Contractor agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. In EMNRD's, GSD/SPD's, or the State Auditor's, (or insert name of federal funding entity)'s sole discretion, the periods of inspection and audit may be extended for records which relate to litigation or settlement of claims arising out of performance of this Agreement (and costs and expenses of this Agreement for which exception is under consideration by the federal funding agency or any authorized representative) and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

19. Indemnification.

Contractor shall defend, indemnify, and hold harmless EMNRD, its officers, employees, agents, and representatives, and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, including any action, proceeding, claim, demand, cost, damage, attorney's fee, or other liability or expense caused by the negligent act or failure to act of Contractor or its officers, employees, servants, subcontractors, consultants, or agents, or caused by the actions of any client of Contractor resulting in injury or damage to persons or property during the time when Contractor, Contractor's officers, agents, employees, servants, consultants, or subcontractors thereof has or is performing services pursuant to this Agreement. In the event that any action, proceeding, claim, demand, cost, damage, attorney's fee, or other liability or expense which may arise out of the performance of this Agreement is brought against Contractor or its officers, employees, servants, subcontractors, consultants, or agents, Contractor shall, as soon as practicable but no later than two days after it receives notice thereof, notify EMNRD's legal counsel, and the Risk Management Division of the New Mexico General Services Department by certified mail. Nothing in this Agreement shall be deemed to be a waiver by the State of New Mexico of the provisions of the Tort Claims Act, NMSA 1978, Sections 41-4-1 *et seq.*

20. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six-month period during the term of the contract, Contractor certifies, by signing this Agreement, to have in place, and agree to maintain for this Agreement's term, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have:

- 1) accepted health insurance;

2) declined health insurance due to other health insurance coverage already in place;
or

3) declined health insurance for other reasons.

These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of state publicly financed health care coverage.

21. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

22. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict performance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

23. Notices.

Except as otherwise specified herein, all notices hereunder shall be in writing (including notice by facsimile) and shall be given to the relevant party at its mailing address, or if set forth below, at its e-mail address, or facsimile number, or such other address or facsimile number as such party may hereafter specify by written notice to the other given by courier, by United States certified or registered mail, by facsimile, or by e-mail or by other telecommunication device capable of creating a written record of such notice and its receipt.

To EMNRD:

[insert position title and address of project manager]

Deputy General Counsel
EMNRD – Office of the Secretary
1220 S. St. Francis Drive
Santa Fe, NM 87505

To Contractor:

[insert contact information]

To Risk Management Division:

Risk Management Division
General Services Department

P.O. Drawer 26100
Santa Fe, NM 87502-0110

24. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on Contractor's behalf and Contractor represent and warrant that such individual has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding agreement.

25. Acknowledgement. (Option: Include in PSA if acknowledgement required. If not using this section, delete it and renumber successive sections accordingly. Delete this instruction.)

Contractor shall acknowledge EMNRD and (insert name of federal funding entity) as a co-sponsor and funding source in all news releases, programs, proceedings, and related publicity/publications for the Project.

26. Attorneys' Fees and Costs.

Contractor agrees that if Contractor is found by a court of competent jurisdiction to have breached this Agreement, or any amendment hereto, or to have committed any tortious act relating to this Agreement, EMNRD shall be entitled to recover from Contractor reasonable attorneys' fees and costs for pre-litigation research, investigation, and preparation, litigation brought to obtain such judicial determination, any appeal of such determination, and to collect any judgment.

27. Minimum Wage Rate.

If applicable, Contractor shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor Relations Division, and with all other applicable requirements of that department, including posting of the wage rates in a prominent location on the site of hiring for and performance of this Agreement.

28. Compliance with Funding Source Conditions.

Contractor shall comply with all applicable state and federal statutes and rules or regulations imposed as a consequence of funding pursuant to this Agreement. Contractor is responsible for obtaining a copy of any federal funding award that provides funding for this Agreement.

(Are you using federal funds for this Agreement? Depending on the funding source, you may be required to include the following. If not, delete this instruction and the inapplicable clauses.)

Contractor shall also comply with the following clauses in the performance of this Agreement:

A. Compliance with use of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) - Contractor shall take affirmative steps to assure that MBEs and WBEs are used when possible as sources of supplies and services. The affirmative steps shall include the following:

- 1) including qualified MBEs/WBEs on solicitation lists;
- 2) assuring that MBEs/WBEs are solicited once they are identified;
- 3) when economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum MBE/WBE participation;
- 4) where feasible, establishing delivery schedules which will encourage MBE/WBE participation;
- 5) encouraging use of the services of the U.S. Department of Commerce's Minority Business Development Agency and the U.S. Small Business Administration to identify MBEs/WBEs, as required; and
- 6) if any subcontracts are to be let, requiring the subcontractor to take the affirmative steps listed above.

B. Compliance with Trafficking Victims Protection Act of 2000 - Contractor, Contractor's employees, subcontractors, and subcontractors' employees shall not:

- 1) engage in severe forms of trafficking in persons during this Agreement's term;
- 2) procure a commercial sex act during this Agreement's term; or
- 3) use forced labor in the performance of this Agreement.

C. Compliance with NMSA 1978, Section 66-7-374, Texting While Driving - Contractor and Contractor's employees shall not read or view a text message or manually type on a handheld mobile communication device for any purpose while driving a motor vehicle in connection with this Agreement, except to summon medical or other emergency help, or unless that device is an amateur radio and the driver holds a valid amateur radio operator license issued by the Federal Communications Commission.

D. In the event this Agreement is funded with federal monies, Contractor shall comply with 2 C.F.R. 200.318 through 200.326 for procurement of property or services conducted pursuant to this Agreement.

E. In the event this Agreement is funded with federal monies and Contractor wishes to enter into an agreement with a small business firm or non-profit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under this Agreement, Contractor shall comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by the (insert name of federal funder).

F. Contractor shall not award subcontracts to parties listed on the government-wide exclusions in the federal System for Award Management (SAM), in accordance with OMB guidelines that implement federal Executive Orders 12549 (3 C.F.R. part 1986, Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well

as parties declared ineligible under statutory or regularity authority other than Executive Order 12549.

G. If the value of this Agreement exceeds \$100,000, Contractor shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) regarding the limitations of use of appropriated funds to influence certain federal contracting and financial transactions.

H. If this Agreement is valued at more than \$150,000, Contractor shall comply with all applicable standards orders or requirements issued under the federal Clean Air Act (42 U.S.C. § 7401 *et seq.*); Clean Water Act (33 U.S.C. § 1251 *et seq.*); Executive Order 11738 (Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans); and U.S. Environmental Protection Agency (EPA) regulations.

29. Insurance. (Type of insurance required varies with nature of work performed. Will always require Workers' Compensation. Delete this instruction.)

A. Contractor certifies that, by signing this Agreement, it will establish and maintain during this Agreement's term, the following policy or policies of insurance providing:

1) Workers' Compensation protection that complies with the requirements of the Workers' Compensation Act, NMSA 1978, Sections 52-1-1 *et seq.*, if applicable. Employer's liability: \$100,000.00. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

2) Comprehensive general liability protection (including endorsements providing broad form property damage, personal injury coverage, and contractual assumption of liability for all liability Contractor has assumed under this Agreement or any amendment thereto), pursuant to NMSA 1978, Section 41-4-19, as may be amended from time to time. Limits shall not be less than the following:

- a. bodily injury: \$1,000,000.00 per person/\$1,000,000.00 per occurrence;
- b. property damage or combined single limit coverage: \$1,000,000.00;
- c. automobile liability (including non-owned automobile coverage): \$1,000,000.00; and
- d. umbrella: \$1,000,000.00.

Such policy or policies shall name the State of New Mexico and EMNRD as additional insured and shall specifically state the coverage provide under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

3) Comprehensive performance liability protection covering contractual liability that may arise under this Agreement and any amendment hereto. Such policy or policies shall name the State of New Mexico and EMNRD as additional insured and shall specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

4) Professional liability insurance covering Contractor's negligent acts, errors, or omissions. (For agreements with architects, engineers, lawyers, etc.)

5) Medical malpractice liability insurance that complies with the Medical Malpractice Act, NMSA 1978, Sections 41-5-1 *et seq.* (For agreements with medical providers who are required to have malpractice insurance.)

6) General liability insurance sufficient to cover the claims which may fall under the Indemnification Paragraph of this Agreement. (For agreements with medical providers who are not required to have malpractice insurance.)

B. Contractor shall provide EMNRD with a copy of the insurance certificate no later than 10 days after this Agreement's effective date. At EMNRD's request, Contractor shall also provide EMNRD with a copy of the insurance policy, or relevant portions thereof. Contractor shall notify EMNRD 30 days before cancellation or expiration of any required Workers' Compensation coverage or (include the references to the types of insurance you are asking for).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the GSD/SPD Contracts Review Bureau below.

STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

By: _____ Date: _____
Cabinet Secretary or Designee

By: _____ Date: _____
Legal Counsel - Certifying legal sufficiency

By: _____ Date: _____
Chief Financial Officer

CONTRACTOR NAME

By: _____ Date: _____
Authorized Representative Signature

Printed Name and Title

This Agreement has been approved by the GSD/SPD Contracts Review Bureau

By: _____ Date: _____
GSD/SPD Contracts Review Bureau

(Selection Option 1 or 2)

Option 1:

The records of the Taxation and Revenue Department reflect Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

**STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT**

I.D. No.: _____
(must be 11 digits long)

By: _____

Date: _____

Taxation and Revenue is only verifying the registration and will not confirm or deny tax liability statements contained in this contract.

Option 2:

Services will be performed out-of-state, Contractor is exempt from paying gross receipts taxes.

**STATE OF NEW MEXICO
TAXATION AND REVENUE
DEPARTMENT**

By: _____

Date: _____

Taxation and Revenue is only verifying the registration and will not confirm or deny tax liability statements contained in this contract.
