

**REQUEST FOR APPLICATIONS
FOR INVASIVE PLANT MANAGEMENT IN FORESTED AREAS
ISSUED BY THE STATE OF NEW MEXICO,
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT,
FORESTRY DIVISION**

ARTICLE I. STATEMENT OF WORK

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division (Division) is seeking applications (Applications) (Exhibit A) to address management of invasive plants on state, private, and public non-federal lands from Cooperative Weed Management Areas (CWMAs) where noxious weeds threaten forested acres. Eligible applicants are non-federal governmental entities involved with a CWMA, including tribes (as long as other federal money is not involved). Successful applicants shall be required to provide 1:1 matching funds.

This Request for Application's (RFA) primary goal is to increase local capacity to manage and prevent invasions of noxious weeds in forested areas. The U.S. Department of Agriculture, Forest Service (Forest Service) has provided these funds specifically to address areas where invasive plants threaten forested acres. Projects must emphasize prevention and treatment of invasive plants. Projects that do not specifically target invasive plants threatening forested acres are not eligible for this funding. Locally-driven CWMAs have been shown to be the best vehicles for implementing weed management programs. Therefore, this program emphasizes the use of existing CWMAs or the creation of new CWMAs.

Projects must address any or all of the following:

- awareness and education;
- prevention and early detection;
- inventory and mapping;
- planning and coordination;
- integrated weed management; or
- monitoring and evaluation.

EMNRD has approximately \$76,500.00 currently available for this project, with the possibility of additional funds being provided later, and may award multiple contracts as a result of this RFA. Applications may request a minimum of \$5,000.00 and a maximum of \$20,000.00. Purchase of items such as backpack sprayers, storage cabinets, storage tanks, or trailers are limited to a maximum of \$5,000.00.

EMNRD shall give the highest priority to programs that apply integrated management practices and demonstrate partnerships and monitoring results. EMNRD shall link priority to the New Mexico Noxious Weed List, assigning higher priority according to classification in the noxious weed list, which can be found on the following link:

<http://www.emnrd.state.nm.us/SFD/Publications/documents/Weed-List-memo-and-weed-list-2016.pdf>

Projects involving invasive plant species other than those on the state's noxious weed list may be considered on a case-by-case basis. For example, projects that propose to treat yellow bluestem (*Bothriochloa ischaemum*), Caucasian bluestem (*B. bladhii*), medusahead (*Taeniatherum caput-medusae*), or ventenata (*Ventenata dubia*) will be considered.

Regardless of the targeted plant species, projects shall use an integrated weed management approach.

ARTICLE II. APPLICATION EVALUATION CRITERIA

The Division shall evaluate applications on 105 possible points as specified below.

1. Does project meet the 1:1 match requirement? (yes or no)
If answer is no, then project is not eligible for scoring.
2. Does project target invasive plants threatening forested acres? (yes or no) If answer is no, then project is not eligible for scoring.
3. Provide a clearly written statement of the problem and applicant's approach to the problem, with clearly stated goals and objectives. Problem statement must clearly explain how the project will address weed issues impacting forested areas. (20 points possible)
4. Briefly describe methodology: (40 points total for items a, b, c, d, e, and f listed below)
 - a. Weed species to be addressed (5 points possible)
 - b. Number of acres that will be mapped and/or treated with requested funding (5 points possible)
 - c. Per acre cost of treatment (5 points possible)
 - d. Activities and tasks (what activities will take place, how will the project be implemented, etc.) (10 points possible)
 - e. Who will perform the work (counties, CWMAs, volunteers, etc.) (10 points possible)
 - f. Monitoring plans to track results (can be qualitative or quantitative) (5 points possible)
5. Project timeframe - (specific timeframe, growing seasons, years, etc.) (5 points possible)
6. Partner organizations - Name each organization that has agreed to play an active role in the accomplishment of the program and indicate what that role is. (10 points possible)
7. Project longevity/maintenance - Demonstrate how the project will remain effective over a five-year timeframe. (5 points possible)
8. Project budget - Must include cost share and sources. (15 points possible). Please note there is a 50-50 match requirement - Applicants

must match 1:1, either in dollars, in-kind services or both. Use of federal match is not allowed.

9. Use of existing CWMAs or creation of new CWMA. (5 points possible)
10. Successful past contract performance. (5 points possible) (New applicants automatically receive 5 points).

Successful projects typically include several cooperating landowners, including private, state, federal, and tribal lands. The Division encourages cooperation with federal agencies, although their efforts may not be included as match and federal agencies are not eligible to receive funds for treatment. When listing the partnerships, applicants shall provide the name of any agencies that will be participating and a contact person who will be representing the agency for the purpose of this project. The Division may contact listed partners during Application review to verify their involvement.

Another function of this program is to foster the growth and developments of CWMAs in New Mexico. Applicants shall also discuss the current status of the CWMA in their area and what steps have been taken to ensure that it continues to be in operation past the duration of this grant cycle.

This program does not reimburse indirect costs. EMNRD shall not allow more than 10% in administrative costs. The last funded project may receive only partial funding if the Division lacks sufficient monies to fully-fund that project. Project contacts will be notified by the Division Program Manager before any partial funding is approved.

Successful applicants shall be required to complete a written report on the projects funded through this grant at the end of the year. The Division shall pay the final 10% of the final grant funds upon receipt of the final financial and narrative reports.

ARTICLE III. CONTRACT DURATION

The contract period shall extend from the date of contract approval by EMNRD and encumbering of funds by the Department of Finance and Administration for a maximum of two years.

ARTICLE IV. CONTRACT TERMS

Contract may be awarded in accordance with the terms of the attached Exhibit A, and Governmental Services Agreement (Exhibit B) and this RFA.

ARTICLE V. CONTACT PERSON AND APPLICATION DEADLINES

Questions regarding this RFA shall be addressed to:

Shannon Atencio,
Las Vegas District Forester/New Mexico Invasive Plants Program Manager
EMNRD, Forestry Division/Las Vegas District
HC 33 Box 109-4
Las Vegas, New Mexico 87701
Telephone: (505) 425-7472.

Applications are available on the Forestry Division website, <http://www.emnrd.state.nm.us/SFD/RFPs/RFPMain.html>, under the “Grants/RFPs” tab. Applicants may also contact Shannon Atencio to obtain Application copies. Applicants must submit one original completed, signed Application packet and five identical hard copies to Mrs. Atencio or her designee at the address above, no later than 4 p.m., MST, Friday, November 20, 2020. Mailed documents must be physically received at the address above by this date and time. EMNRD shall make absolutely no exceptions for applications not received at the above location by the appointed time. Applications MAY NOT be sent by facsimile or e-mail.

Please note the following requirements regarding the attached federal forms:

- All Applicants must complete and submit a **Financial Capability Questionnaire** (Exhibit C) and submit it with their Application. Successful Applicants must complete the Financial Capability Questionnaire annually.
- All Applicants must review the criteria indicated on the **Federal Eligibility Checklist** (Exhibit D). Successful Applicants will be required to comply with Exhibit D.

ARTICLE VI. NOTICES

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

Where applicable, applicants must factor in Governmental Gross Receipts Tax (GGRT) as part of their responses. Any response that does not clearly indicate GGRT is included in the cost section may be deemed non-responsive and rejected.

EMNRD may cancel this RFA and may reject any and all applications when it is in the State of New Mexico’s best interest.

EMNRD may conduct discussions with applicants who submit Applications, but may also accept Applications without such discussions.

Exhibit A

For Forestry Division use only	
Dollar amount requested	\$
Matching share	\$

**Energy, Minerals and Natural Resources Department
Forestry Division
FY2021 Invasive Plants Application**

Applicant Information					
Applicant Name					
Contact Person					
Address					
City/State/Zip Code					
Telephone (Work/Cell)					
E-mail					
Fax					
Project Summary					
Project Name					
County/Counties					
Does this Project involve a CWMA? (check one)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
Name of CWMA					
Does this Project create a new CWMA? (check one)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
Does this Project address weed issues in or threatening forested areas? (check one)	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	
Project Type (Check all that apply)					
<input type="checkbox"/>	Awareness and education	<input type="checkbox"/>	Prevention and early detection	<input type="checkbox"/>	Planning and coordination
<input type="checkbox"/>	Inventory and mapping	<input type="checkbox"/>	Integrated weed management (treatment)	<input type="checkbox"/>	Monitoring and evaluation

Problem Statement (All information must fit into the allotted character space of 2,000 characters)

Provide a concise written statement of the problem and your approach, with clearly stated goals and objectives. Must clearly show how the project will address weed issues impacting forested areas:

Methodology (All information must fit into the allotted character space of 2,000 characters)

Briefly describe the methodology. Measurable activities and tasks must include the following:

- (a) Weed species to be addressed (only species from New Mexico Noxious Weed List are eligible)
- (b) Number of acres to be mapped or treated (treatment includes activities such as spraying, mowing, seeding after treatment, etc.)
- (c) Per acre cost of treatment (dollar amount, ex. \$75/acre)
- (d) Activities and tasks
- (e) Who will perform work
- (f) Monitoring plans

Project Timeline (All information must fit into the allotted character space of 500 characters)

Provide a timeline for the Project. (Remember the length of a contract will be two years.)

Project Contributors (Matching Share) (Applications will be disqualified if insufficient match is identified; federal dollars DO NOT qualify. Please specify each match contributor and the dollar amount of each contribution. Please DO NOT show requested funds in this section. This section is for matching share only.)

Contributor name:	Dollars (hard match)	In-kind (soft match)	Total
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

Program Budget (break down matching share totals from Project Contributors Section above)

	\$ Amount requested	Match (from Project Contributors Section)		Total
		Dollars	In-kind	
Administrative Costs (no more than 10% of total project cost)	\$	\$	\$	\$
Treatment (cost per acre x number of acres)	\$	\$	\$	\$
Travel	\$	\$	\$	\$
Contractual services	\$	\$	\$	\$
Equipment	\$	\$	\$	\$
Other (explain in detail in budget narrative)	\$	\$	\$	\$
Total	\$	\$	\$	\$

Budget Narrative (All information must fit into the allotted character space of 2,000 characters)

Provide a detailed description of your Project budget. Explain specific costs listed in the budget categories in the Program Budget Section above.

Administrative Requirements	
By signing this application, applicant certifies the following:	
If the applicant finds discrepancies, omissions, or ambiguities in the contract documents, it will at once notify EMNRD, which will send written corrections or explanations to all applicants. EMNRD will not be responsible for any oral instructions.	
If the applicant's Application substantially adds to, subtracts from, or otherwise changes the provisions of this RFA, the application shall be void.	
Applicant has examined all contract documents, noting particularly all stipulations that in any way affect contract work. EMNRD will not consider applicant's failure to acquaint itself fully with the amount and nature of the work required to fulfill all terms of the contract documents as a basis for extra compensation after a contract has been awarded.	
Applicant certifies that all entities responsible for authorizing the activities of the applicant have agreed that this application should be submitted as written.	
Applicant certifies that that funds awarded to applicants by EMNRD through any contract issued pursuant to this RFA will not be used to supplant funds that the applicant may have at its disposal from other sources.	
Application Package Checklist	
Application package MUST include one original and five identical copies of the documents listed below. If all of the required information is not provided, EMNRD will deem the application package as non-responsive.	
<input type="checkbox"/>	Application – Electronically completed, printed out, and signed.
<input type="checkbox"/>	Letters of support from all contributors listed in the Project Contributors Section above.
<input type="checkbox"/>	Map/maps showing project area and proposed treatment locations and acreage. If project is targeting existing noxious weed infestations, then map must include previously inventoried/mapped weed areas and clearly identify target species.

Submitted by:

By: _____ Date: _____
 Authorized Representative Signature

 Printed Name and Title

Applications will be scored based upon:		
Meets the 1:1 match requirement	Yes = Eligible for scoring	No = Ineligible for scoring
Does Project target invasive weeds threatening forested areas?	Yes = Eligible for scoring	No = Ineligible for scoring
Is the problem statement clearly written? (20 points possible)	Yes = 20	No = 0
Methodology		
<i>40 points total for a, b, c, d, e and f</i>		
A. Are the weed species clearly listed in the application, are they species linked to the New Mexico Noxious Weed List? (5 points possible)	Yes = 5	No = 0
B. Does the application clearly indicate the number of acres to be mapped and/or treated? (5 points possible)	Yes = 5	No = 0
C. Does the application clearly state the per acre cost of treatment (5points possible)	Yes = 5	No = 0
D. Does the application clearly explain Project activities and tasks? (10 points possible)	Yes = 10	No = 0
E. Does the application include a clear explanation of who will perform the work? (10 points possible)	Yes = 10	No = 0
F. Is there a qualitative or quantitative monitoring plan to track the results? (5 points possible)	Yes = 5	No = 0
Does application include a clear timeline, with achievable goals? (5 points possible)	Yes = 5	No = 0
Are the partner organizations clearly named with their contribution detailed? (10 points possible)	Yes = 10	No = 0
Does the application clearly demonstrate how the Project and CWMA will remain effective over time? (5 points possible)	Yes = 5	No = 0
Does the budget include match and sources? Does the budget narrative clearly explain all costs associated with the proposed Project? (15 points possible)	Yes = 15	No = 0
Does the Project use an existing Cooperative Weed Management Area (CWMA) or create a new one? (5 points possible)	Yes = 5	No = 0
Has the Applicant had successful past contract performance with this program? New Applicants will receive full points in this category. (5 points possible)	Yes = 5	No = 0

Exhibit B

STATE OF NEW MEXICO
GOVERNMENTAL SERVICES AGREEMENT
BETWEEN THE
STATE OF NEW MEXICO, ENERGY, MINERALS AND
NATURAL RESOURCES DEPARTMENT
AND
CONTRACTOR

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. Remove this instruction.)* (Contractor).

THE PARTIES MUTUALLY AGREE:

1. Scope of Work: Contractor shall:

(Insert description of work. Remove this instruction.)

Contractor shall also provide brief written progress reports to EMNRD on a *(weekly, bi-weekly, monthly, quarterly, annual, with each request for payment/reimbursement or some other time frame)* basis. *(All contracts must have reporting requirements, or the program manager must justify the lack of reports in a written memo to the file for auditing purposes.)*

2. Compensation: *(For paragraph A, select option 1, 2, 3 or 4)*

Option 1: Work Product. If you choose this option, remove this Option 1 heading and remove the optional Paragraph As below.

A. EMNRD shall pay Contractor for services satisfactorily performed pursuant to the Scope of Work and as specified below. This amount shall not exceed _____ (\$ _____), including New Mexico gross receipts taxes, and any travel, if necessary, pursuant to Paragraphs B and C of this Compensation Section. 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. Remove this instruction)

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 or the amounts state per task. The parties do not intend for the 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 shall the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. 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 SHALL NOT BE PAID.

Option 2: Lump Sum Amount Upon Completion of All Work. If you choose this option, remove Paragraph B of this Compensation Section as well and re-letter successive paragraphs accordingly. Remove the paragraph above it. Remove this Option 2 heading.

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, and any travel, if necessary, pursuant to Paragraphs B and C of this Compensation Section. In no event shall the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. 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 SHALL NOT BE PAID.

Option 3: Time and Materials. If you choose this option, remove this Option 3 heading and the paragraphs above it.

A. EMNRD shall pay Contractor for services rendered and amount not to exceed _____ (\$ _____) per (hour, day, week, month), such compensation not to exceed _____ (\$ _____) in total, which amount includes gross receipts taxes and travel as shown in Paragraphs B and C of this Compensation Section. EMNRD shall reimburse Contractor for the cost of materials necessary under this Agreement for an amount not to exceed _____ (\$ _____). This amount is a maximum and not a guarantee that the work assigned to Contractor under this Agreement to be performed shall equal the amount stated herein. 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 SHALL NOT BE PAID. Payment shall not relieve the Contractor of any unperformed obligations under the Scope of Work.

B. EMNRD shall pay such travel expenses as may be incurred in, and that are necessary for, this Agreement's performance at the rates established in the New Mexico Per Diem and Mileage Act, NMSA 1978, §§ 10-8-1, *et seq.* as implemented by the current Department of Finance and Administration (DFA) rule and the current EMNRD travel policy.

C. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement.

D. Contractor must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. *(Vouchers must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Wage amounts charged shall be based upon payrolls maintained by Contractor and must be supported by time and attendance sheets.)* If EMNRD finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Contractor that payment is requested, and (ii) all supporting documentation, EMNRD shall provide the Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Contractor may take to provide remedial action. Upon EMNRD's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, EMNRD shall tender payment to the 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.

Option 4: Advance of Funds. If you choose this option, remove all the previous choices. Remove this Option 4 heading.

A. Within XX days following this Agreement's effective date, EMNRD shall transfer to Contractor _____ (\$ _____), which shall include New Mexico Governmental Gross Receipts Taxes, for completion of the Tasks described in the Scope of Work above. Payment shall not relieve Contractor of any unperformed obligations under the Scope of Work.

B. Upon expiration or termination of this Agreement, if either party has property or funds in its possession belonging to the other, it shall return the property or funds in proportion to the parties' original contribution.

C. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes levied on amounts payable under this Agreement, if applicable.

3. Term: This Agreement becomes effective when executed by an authorized representative of Contractor and of EMNRD and when DFA encumbers funds for this Agreement. It shall terminate on *(Insert date)* unless earlier terminated pursuant to Section 4, Termination, or Section 5, Appropriations, below.

4. Termination: Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature *(option - and insert name of federal funding agency)* granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be at its sole and absolute discretion and shall be final, binding, and accepted by Contractor.

Option: If Contractor is another state agency, revise this section to reflect Contractor is not an EMNRD employee. Remove this instruction.)

6. Status of Contractor: Contractor and its 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 the Contractor for tax purposes, including without limitation, self-employment and business income tax. Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that written 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 or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval. EMNRD may disallow costs incurred by the Contractor in relation to a subcontract if Contractor does not obtain prior written approval.

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. Sections 200.318 through 200.326 for procurement of subcontractors 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 New Mexico Per Diem and Mileage Act, NMSA 1978, § 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 whatsoever 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 and shall not be made available by Contractor to any individual or organization without EMNRD's prior written approval.

11. Product of Services; Copyright: All materials developed or acquired by Contractor under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Contractor produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Contractor.

12. Conflict of Interest; Governmental Conduct Act: Contractor warrants that it presently has no interest and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Contractor certifies that all applicable provisions of the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through -18, including provisions related to contracting

with, or employing, public officers, legislators, state employees, or former state employees, have been followed.

13. Amendment: This Agreement shall not be altered, changed, or amended except by written instrument executed and approved by the parties hereto.

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 or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

15. Penalties for Violation of Law: The Procurement Code, NMSA 1978, §§ 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, the 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, § 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 any and all lawsuits arising under or out of any term of this Agreement.

18. Records and Audit:

A. Contractor shall maintain detailed 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 until six years after the termination date specified in Section 3, Term. These records shall be maintained and available within the State of New Mexico if the Contractor has an office within the state; otherwise, Contractor shall make such records available to EMNRD within 10 days upon EMNRD's request. During this time, such records shall be subject to inspection by EMNRD, DFA and the State Auditor *(and insert name of federal funding agency)*. Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. 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 related to this Agreement for which exception is under consideration by insert name of federal funding agency or any authorized representative)* and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

Option: Are you using federal funds to pay for this contract? If yes, you must make a determination whether your provider is a subrecipient or a contractor. If you determine your provider is a subrecipient, you need to include the following paragraph in your contract. If you determine your provider is a contractor, the requirements do not apply and you will remove this this paragraph. Delete this instruction.

B. If Contractor receives \$750,000 or more in federal funding from all sources in the aggregate in a fiscal year, Contractor's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state and local government audit requirements, and in accordance with the Single Audit Act Amendments of 1996, 2 C.F.R. 200, Subpart F – Audit Requirements, OMB Circular Compliance Supplement and Government Auditing Standards, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractors who do not meet the \$750,000 audit threshold (Tier 7), must complete the State of New Mexico – Office of the State Auditor Certification Form for Tier 1 and Tier 2, or the Office of the State Auditor Agreed Upon Procedures (Tiers 3-6) in accordance with the Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, and 2.2.2.16 NMAC, Annual Financial Procedures Required for Local Public Bodies with Annual Revenues Less than Five Hundred Thousand Dollars. In order to comply with state audit requirements, Contractors shall have one of the above-mentioned Forms or Agreed Upon Procedures on file with the Office of the State Auditor. Contractor shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

19. Liability: Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*, as amended.

20. Procurement, Utilization, and Disposition of Property: Contractor shall report acquisition of any capital property (property with an expected life of at least one year) to EMNRD within one month following the acquisition. If upon termination of this Agreement Contractor has any property in its possession belonging to EMNRD, Contractor shall account for the property and dispose of it as EMNRD directs. *(Option: If federal funding is involved include the following statement. Otherwise remove it and this instruction) All property acquired by the Contractor or procured under this Agreement shall be used and disposed of in accordance with [insert federal funding agency's name] regulations governing disposal of property.*

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 waiver of a specified right by a party shall be effective to waive any other rights.

23. Notice: Except as otherwise specified herein, all notices hereunder shall be in writing (including, without limitation, notice by facsimile) and shall be given to the relevant party at its address or facsimile number set forth below, or such other address or facsimile number as

such party may hereafter specify by notice to the other given by courier, by United States certified or registered mail, by facsimile, 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)

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

To the Contractor:

(insert name, address and e-mail)

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 behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor or any other entity is necessary to enter into a binding contract.

Option: Include the following if acknowledgment required. If not, remove this section and renumber successive accordingly. Remove this instruction.

25. Acknowledgment: Contractor shall acknowledge EMNRD *(option - and insert name of federal funding agency)* as a co-sponsor and funding source in all news releases, programs, proceedings and related publicity/publications for the project.

26. Attorney's Fees and Costs: Contractor agrees that if a court of competent jurisdiction finds Contractor has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Contractor reasonable attorneys' fees and costs in connection with litigation brought to obtain the judicial 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 for hiring and performing of this Agreement.

28. Compliance with Law and Funding Source Conditions:

A. Contractor shall comply with all applicable state and federal statutes, regulations or rules, including without limitation those imposed as a consequence of funding

pursuant to this Agreement.

(If you are using federal funds to pay for the work of this agreement, the following clauses must be included. If you are using non-federal funding, delete the clauses and this instruction.)

B. Contractor shall comply with 2 C.F.R. Sections 200.318 through 200.326 for procurement conducted pursuant to this Agreement.

C. 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. Contractor shall not award subcontracts to parties listed on the governmentwide exclusions in the federal System for Award Management (SAM), in accordance with OMB guidelines that implement federal Executive Orders 12549 (3 C.F.R. page 1986, Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM exclusions contains 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.

E. If applicable, Contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the items exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

F. 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.

G. 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 EPA regulations.

Option: If agreement is with a state agency do not include the following provision because all state agencies are covered by Risk Management Division. Remove this Section (and this instruction) and renumber successive sections accordingly. If agreement is with a county, municipality, state university or public school, determine whether it has insurance coverage. If it does, keep the following. If the county, municipality, state university or public school does not have coverage, discuss the situation with legal as to how it should be addressed. Remove these instructions.

29. Insurance Coverage: Contractor shall provide EMNRD a statement indicating that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party, prior to commencing work under this Agreement. Contractor shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Contractor shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Worker's Compensation Act, NMSA 1978, §§ 52-1-1, *et seq.*, if applicable. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

IN WITNESS WHEREOF, the parties hereto have herein below executed this Agreement.

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

By: _____
Cabinet Secretary or Designee

Date: _____

CONTRACTOR NAME

By: _____
Authorized Representative Signature

Date: _____

Printed Name and Title



FINANCIAL CAPABILITY QUESTIONNAIRE
FISCAL YEAR:

Adequate accounting systems should meet the following criteria as outlined in the Office of Management and Budget's (OMB) Circular of Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 CFR Part 200, as implemented by USDA regulations 2 CFR Part 400.

(1) Accounting records should provide information needed to adequately identify the receipt of funds under each grant awarded and the expenditure of funds for each grant.

(2) Entries in accounting records should refer to subsidiary records and/or documentation which support the entry and which can be readily located.

(3) The accounting system should provide accurate and current financial reporting information.

(4) The accounting system should be integrated with an adequate system of internal controls to safeguard the funds and assets covered, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed management policies.

APPLICANT ORGANIZATIONAL INFORMATION

1. Name of Organization and Address:		
2. Authorized Representative's Name and Title:		
3. Phone: - - ext.	4. Fax: - -	5. Email:
6. Year Established:	7. Employer Identification Number (EIN):	8. DUNS Number:
9. Type of Organization:		
10. Approximate Number of Employees: Full Time (Paid): Full Time (Volunteer):		Part Time (Paid): Part Time (Volunteer):

FEDERAL AUDIT DATA

11. Have you been audited by a Federal agency?: <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please indicate the type:	
<input type="checkbox"/> OMB A-133 Single Audit (required of institutions that annually expend over \$750,000 in federal funds)	
<input type="checkbox"/> Incurred Cost <input type="checkbox"/> Accounting System <input type="checkbox"/> Timekeeping	
12. Date of Last Federal Audit/Review (m/d/yyyy):	Audit Agency/Firm:
If findings are reported, explain:	

FINANCIAL STATEMENT AUDIT DATA

13. Date of Last Financial Statement Audit:	Fiscal Period Audited:
Audit Firm:	
Auditor's Opinion on Financial Statement:	<input type="checkbox"/> Unqualified Opinion <input type="checkbox"/> Qualified, Disclaimer or Adverse Opinions
If other than unqualified, state reason:	



If you have not had an audit completed in the last two years, please submit a copy of your most recent tax forms (990 for non-profits). If you do not have a current tax form, please explain:

ACCOUNTING SYSTEM

14. Has any Government Agency rendered an official written opinion concerning the adequacy of the accounting system for the collection, identification and allocation of costs under Federal contracts/grants?

Yes No

15. If yes, provide name and address of Agency performing review:

Attach a copy of the latest review and any subsequent correspondence, clearance documents, etc.

16. Which of the following best describes your accounting system:

Manual Automated Combination

17. Does the accounting system identify the receipt and expenditure of program funds separately for each grant?

Yes No Not Sure

18. Does the accounting system provide for the recording of expenditures for each grant/contract by budget cost categories shown in the approved budget?

Yes No Not Sure

19. Does the accounting system provide for the recording of cost sharing or match for each grant? Can you ensure that documentation is available to support recorded match or cost share?

Yes No Not Sure

20. Are time distribution records maintained for each employee that specifically identify effort charged to a particular grant or cost objective?

Yes No Not Sure

21. Does the accounting/financial system include budgetary controls to preclude incurring obligations or costs in excess of total funds available for a grant?

Yes No Not Sure

22. Does the accounting/financial system include budgetary controls to preclude incurring obligations or costs in excess of total funds available for a budget cost category (e.g. Personnel, Travel, etc.)?

Yes No Not Sure

23. Is your organization generally familiar with the existing regulation and guidelines containing the Cost Principles and procedures for the determination and allowance of costs in connection with Federal grants?

Yes No Not Sure

FUNDS MANAGEMENT

24. Is a separate bank account maintained for Federal grant funds?

Yes No

25. If a separate bank account is not maintained, can the Federal grant funds and related expenses be readily identified?

Yes No

PROPERTY STANDARDS, PROCUREMENT STANDARDS, AND TRAVEL POLICIES

PROPERTY STANDARDS

26. Does your property management system(s) provide for maintaining: (1) a description of the equipment; (2) an identification number; (3) source of the property, including the award number; (4) where title vests; (5) acquisition date; (6) federal share of property cost; (7) location and condition of the property; (8) acquisition cost; & (9) ultimate disposition information?

Yes No Not Sure



27. Does your property management system(s) provide for a physical inventory and reconciliation of property at least every two years?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
28. Does your property management system(s) provide controls to insure safeguards against loss, damage or theft of the property?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
PROCUREMENT STANDARDS	
29. Does your organization maintain written procurement procedures which (1) avoid unnecessary purchases; (2) provide an analysis of lease and purchase alternatives; and (3) provide a process for soliciting goods and services?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
30. Does your procurement system provide for the conduct to ensure selection on a competitive basis and documentation of cost or price analysis for each procurement action?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
31. Does your procurement system include provisions for checking the "Excluded Parties List" system for suspended or debarred sub-grantees and contractors, prior to award? www.sam.gov	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
TRAVEL POLICY	
32. Does your organization maintain a standard travel policy or, if no policy exists, does your organization adhere to rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), and policies under the Federal Acquisition Regulations at 48 CFR 31.205- 46(a)?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
SUBRECIPIENT MANAGEMENT	
33. (For Pass-through entities only). Does your organization have controls in place to monitor activities of subrecipients, as necessary, to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of the award and that performance goals are achieved.	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
INDIRECT COSTS	
34. My organization has an established indirect cost rate	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
35. If my organization chooses to charge indirect costs to the Federal award or use indirect costs as a match, you understand that you must prepare an indirect cost rate proposal and submit it to your cognizant Federal agency for approval. Alternatively, you may use a de minimus rate of 10% of modified total direct costs (MTDC).	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure
STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS AND APPLICANT CERTIFICATION	
I certify that the above information is complete and correct to the best of my knowledge.	
Signature:	
Name:	
Title:	

