

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF NEW MEXICO

REQUEST FOR PROPOSALS (RFP)

Financial and Compliance Audit



PERA

Public Employees
Retirement Association
of New Mexico

INVESTED IN TOMORROW.

RFP No. 36600-2022-00003

RFP Release Date: February 4, 2022

Proposal Due Date: March 10, 2022

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of a financial and compliance audit. The Public Employees Retirement Association of New Mexico (“PERA” or the Agency) is requesting proposals from qualified firms that have demonstrated past excellence and knowledge in providing financial and compliance audits to state pension plans. PERA administers 31-member coverage plans covering state, municipal and county employees, police, firefighters, judges, magistrates and legislators. As of June 30, 2021, PERA has 81,000 non-retired members and 44,850 retired members.

B. BACKGROUND INFORMATION

The New Mexico Public Employees Retirement Board (“Board”) is the Trustee of the Public Employees Retirement Association (“PERA”) and the funds created by the Public Employees Retirement Act, NMSA 1978, Sections 10-11-1, et seq., as amended, the Judicial Retirement Act, NMSA 1978, Sections 10-12B-1 et seq., as amended, the Magistrate Retirement Act, NMSA 1978, Sections 10-12C-1 et seq., as amended, the Volunteer Firefighters Retirement Act, NMSA 1978, Section 10-11A-1 et seq., as amended and the Deferred Compensation Act, NMSA 1978, Sections 10-7A-1 et seq. as amended. As Trustees, Board Members are fiduciaries to the various PERA funds and must prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees, and beneficiaries per N.M. Const. art. XX, § 22. Additionally, the Executive Director also has a fiduciary duty to prudently administer these retirement systems for the sole and exclusive benefit of PERA members, retirees, and beneficiaries. The retirement systems are treated as qualified plans under Section 401(a) of the Internal Revenue Code. The Funds’ assets were valued more than \$18.1 billion as of January 21, 2022.

C. SCOPE OF PROCUREMENT

PERA is seeking a contractor to conduct a financial and compliance audit for applicable statements and schedules of the Agency and other financial and compliance audit services as further described in Section IV.A for the period from July 1, 2021, through June 30, 2022, with the option to extend for three successive one-year terms.

D. PROCUREMENT MANAGERPERA has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Zarina Martinez, Procurement Manager
Telephone: (505) 476-9307
Email: zarina.martinez2@state.nm.us

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the PERA. The evaluation committee members and procurement manager will comply with the requirements of Sections 5, 8, and 9 of the PERA Employee Code of Conduct throughout this procurement process.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.13.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

E. PROPOSAL DELIVERY

All deliveries of proposals via express carrier, courier or hand delivery, must be addressed and submitted as follows:

*Name: Zarina Martinez
Reference RFP Name: Financial and Compliance Audit
RFP NO. NM 36600-2022-00003
Address: Public Employees Retirement Association of New Mexico
33 Plaza La Prensa
Santa Fe, New Mexico 87507*

F. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

1. “**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. “**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.

3. **“Award”** means the final execution of the contract document.
4. **“Business Hours”** means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
5. **“Close of Business”** means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
6. **“Confidential”** means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978, See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
7. **“Contract”** means any agreement for the procurement of items of tangible personal property, services, or construction.
8. **“Contractor”** means any business having a contract with a state agency or local public body.
9. **“Determination”** means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
10. **“Desirable”** – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
11. **“Electronic Version/Copy”** means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (CD) or USB flash drive. The electronic version/copy can NOT be emailed.
12. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
13. **“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
14. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.

15. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
16. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
17. **“IT”** means Information Technology.
18. **“Mandatory”** – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
19. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
20. **“Multiple Source Award”** means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
21. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
22. **“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
23. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.
24. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions, and local public bodies allowed by law to entertain procurements.
25. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.
26. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.

27. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
28. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
29. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity, or delivery requirements.
30. **“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.
31. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.
32. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
33. **“State (the State)”** means the State of New Mexico.
34. **“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
35. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.
36. **“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g., “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)

37. “**Unredacted**” means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
38. “**Written**” means typewritten on standard 8 ½ x 11-inch paper. Larger paper is permissible for charts, spreadsheets, etc.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	PERA	February 4, 2022
2. Acknowledgement of Receipt Form	Potential Offerors	February 14, 2022
3. Deadline to submit Written Questions	Potential Offerors	February 17, 2022
4. Response to Written Questions	PERA Procurement Manager	February 23, 2022
5. <i>Submission of Proposal</i>	<i>Potential Offerors</i>	<i>March 10, 2022, 3:00 pm MST or MDT</i>
6. * Proposal Evaluation	Evaluation Committee	March 15 - April 15, 2022
7. * Selection of Finalists	Evaluation Committee	May 3, 2022
8. * Best and Final Offers	Finalist Offerors	May 9, 2022, (Optional)
9. * Oral Presentation(s)	Finalist Offerors	May 9, 2022, (Optional)
10. * Finalize Contractual Agreements	PERA/Finalist Offerors	May 13, 2022
11. * Contract Awards	PERA/ Finalist Offerors	June 1, 2022
12. * Protest Deadline	PERA	+15 days after awarding of contract

* Dates indicated in Events 6 through 12 are estimates only and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II.A., above.

1. Issue RFP

This RFP is being issued on behalf of the Public Employees Retirement Association of New Mexico (“PERA”) on February 4, 2022.

2. Acknowledgement of Receipt Form

Potential Offerors should hand deliver, email, or send by registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated, and returned to the Procurement Manager by 3:00 pm MST or MDT on February 14, 2022.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror’s representative shall not be included on the distribution list and will be solely responsible for obtaining from the website, responses to written questions and any amendments to the RFP.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until February 17, 2022, MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

5. Submission of Proposal

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON March 10, 2022. **NO LATE PROPOSAL CAN BE ACCEPTED.** For electronic proposals, the date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks “OK” after “Review and Submit.” Such electronic submissions

will be considered sealed in accordance with statute. For hard copy proposals, the date and time of receipt will be recorded on each proposal. If an Offeror decides to use a third-party delivery entity to submit its proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third-party entity and ensure that the delivery is made prior to the stated deadline. Weather delays, traffic jams, deliveries to the incorrect address nor any other reason for a delay will be accepted for failure to make the stated deadline.

Proposals must be addressed and delivered to the Procurement Manager at the address identified in Section I.E. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Financial and Compliance Audit RFP Number 36600-2022-00003.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select, and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time

8. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

9. Oral Presentations

Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a location to be determined as per schedule Section II.A., Sequence of

Events, or as soon as possible thereafter. Whether or not Oral Presentations will be held is at the discretion of the Evaluation Committee and SPD.

10. Finalize Contractual Agreements

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

11. Contract Awards

Upon receipt of the signed contractual agreement, the Agency Procurement office will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate Department and State approval.

12. Protest Deadline

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule, and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Protest Manager
Financial/Budget Manager
Marlena Riggs
33 Plaza La Prensa
Santa Fe, NM 87507

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of these Conditions Governing the Procurement, Section II.C, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract before any subcontractor is used during the term of this agreement.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Agency personnel will not merge, collate, or assemble proposal materials.**

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request addressed to the Procurement Manager and signed by the Offeror's duly authorized representative.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one-hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
 1. confidential financial information concerning the Offeror's organization; and
 2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Sections III.B.1.a.i and III.B.2.a.i, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

IMPORTANT: The price of products offered, or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Agency determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be affected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85, NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.20. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the

same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

21. Notice of Penalties

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

22. Agency Rights

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency or SPD unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: [RFPs \(nmpera.org\)](http://nmpera.org)

28. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for 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. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

30. Letter of Transmittal

Offeror's proposal must be accompanied by an **unaltered** Letter of Transmittal Form (APPENDIX E), which must be **completed** and **signed** by the individual authorized to contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number).
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only required if the responses differ from the individual identified in A*).
3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award.
4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and
5. Be signed and dated by the person identified in #2 above; attesting to the veracity of the information provided and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

Failure to respond to ALL items as indicated above, will result in Offeror's disqualification.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body.
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract.
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property.
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure.
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state, or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

32. New Mexico Preferences

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (as amended), Offerors **must** include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

A copy of the certification must accompany Offeror's proposal.

B. New Mexico Resident Veterans Business Preference

A copy of the certification must accompany Offeror's proposal.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

B. NUMBER OF COPIES

1. Hard Copy Responses

Offeror's proposals must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted in the manner outlined below and sealed according to the definition provided in Section I.F.31. Each ORIGINAL binder (Technical and Cost) shall be clearly marked as "ORIGINAL" on the front of the binder. The additional HARD COPIES (if any) must each be submitted in separate binders and must be clearly identified as "COPY" on the front cover.

Technical and Cost portions of Offerors proposal **must** be submitted in separate binders as indicated below in this section, and **must** be prominently identified as "Technical Binder," or "Cost Binder," on each front cover. Envelopes, packages, or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package or box according to the information provided in Section I.E. It is not necessary to segregate Technical Binders from Cost Binders, if they are submitted within the same sealed envelope, package or box, as long as the Technical Binders and Cost Binders are each submitted in separate binders.

Offerors **must** deliver:

- a) **Technical Proposals** – One (1) ORIGINAL, five (5) HARD COPY, and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Technical Proposal; ORIGINAL and all HARD COPIES of the Technical Proposal shall be in separate labeled binders. **The electronic copy MUST be submitted as a USB/CD and CANNOT be emailed.** The Technical Proposals **SHALL NOT** contain any cost information.
- i. **Confidential Information**: If Offeror's proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit:
 - All of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section 1.F.38) versions for evaluation purposes; **AND**
 - ONE (1) additional **redacted** (def. Section 1.F.27) HARD COPY version and ONE (1) additional **redacted** electronic version for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal. Redacted versions **must** be clearly marked as "REDACTED" or "CONFIDENTIAL" on the front cover of the hard-copy binder and on the first page of the electronic file.

- b) **Cost Proposals** – One (1) ORIGINAL, five (5) HARD COPY, and one (1) ELECTRONIC copy of the proposal containing **ONLY** the Cost Proposal; ORIGINAL and all HARD COPIES of the Cost Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy MUST be submitted as a USB/CD and CANNOT be emailed.**

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e., One (1) **unredacted CD/USB**, one (1) **redacted CD/USB**). **The electronic version can NOT be emailed.**

The ORIGINAL, HARD COPIES and ELECTRONIC copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the ORIGINAL shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization**, may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals:

1. Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Technical Proposal (Binder 1) – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror's Additional Terms and Conditions (from Section II.C.16)
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binder 2**)
 1. Organizational Experience
 2. Organizational References

3. Oral Presentation (if applicable)
 4. Mandatory Specification
 5. Desirable Specification
 6. Financial Stability –(Financial information considered confidential, as defined in Section I.E. and detailed in Section II.C.8, should be placed in the **Confidential Information** binder, per Section II.B.1.a.i or Section II.B.2.a.i, as applicable)
 7. Performance Surety Bond (if applicable)
 8. New Mexico Preferences (if applicable)
- H. Other Supporting Material (if applicable)

Cost Proposal (Binder 2):

1. Completed Cost Response Form (APPENDIX D)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in Binder 2.**

A Proposal Summary may be included in Offeror's Technical Proposal (Binder 1), to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting material will be evaluated and awarded points accordingly.

A. DETAILED SCOPE OF WORK

1. Scope of Work

- A. The Contractor shall conduct a financial and compliance audit of the Agency for Fiscal Year 2022-2025 in accordance with auditing standards generally accepted in the United State of America, Government Auditing Standards, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, the Audit Act, and the Audit Rule (NMAC Section 2.2.2.1 et seq.).

2. Other Provisions

Special Audit Work on Separate Report on the Schedule of Pension Liability at Participant Employer Level, required by Section 2.2.2.10.Y, NMAC.

Additional items added to the Scope of Work are reflected in Attachment A.

a) Attachment A

The following are additional items to the Scope of Work:

- Basic Financial Statements consist of the Statement of Fiduciary Net Position and Statements of Changes in Fiduciary Net Position of the Public Employees Retirement Fund, Judicial Retirement Fund, Magistrate Retirement Fund and Volunteer Firefighters Fund.
- Supplemental Information (SI) consisting of administrative and investment expenses.
- PERA prepares a Comprehensive Annual Financial Report in accordance with the Government Finance Officers Association (GFOA). The Contractor must also prepare an opinion for the financial statement section of the ACFR in accordance with current GAAFR guidelines each year.
- Reports must be delivered to OSA on the due date or earlier in the proper format as indicated by OSA. Contractor acknowledges that the information and data provided by the Agency for the purpose of audit services under this Agreement is not public information and is confidential in nature and unauthorized disclosure of which will cause the Agency substantial harm. Contractor shall ensure that such information and data is kept confidential, not used for any other purpose, and further acknowledges and agrees that this Agreement is subject to continuing efforts of the Agency to maintain the confidentiality of such information. Contractor agrees to take all reasonable and commercially accepted measures to ensure the security and confidentiality of such information, including but not limited to password protection

of all confidential data stored and transmitted. Agency data shall be protected in flight and at rest by encryption best practices as outlined in NIST SP 800-175B and Contractor agrees such encryption shall be used on every device where the Agency data may be stored or transmitted. If the Contractor experiences a data breach, the Contractor is required to notify the Agency within a 24-hour period. Contractor shall make available to the Agency its policies and procedures addressing 1) data security, 2) encryption policies, and 3) computer user security training.

B. TECHNICAL SPECIFICATIONS

1. Company Background and General Description

- a. Give a brief history of the firm including the year organized.
- b. Provide a listing or chart detailing the organization of your firm, with the number of people in each position.
- c. Describe the nature of the firm's ownership and specific details with regard to any affiliated companies or joint ventures.
- d. Provide information on the financial condition of the firm, including status of net worth (positive or negative). Include a copy of the firm's most recent financial statements.
- e. Describe the dollar levels of coverage for performance bonds, errors and omissions coverage and any other professional liability coverage which your firm carries. List the insurance carriers supplying the coverage. In addition, the Offeror shall attach proof of insurance coverage to its proposal.
- f. Over the past five years, has your organization or its parent or any of its affiliates, or any officer or principal been involved in any business litigation or other legal proceedings related to your auditing activities? If so, provide a brief explanation and indicate the current status.
- g. Describe any potential conflicts of interest your firm may have with regard to providing auditing services for PERA.

2. Detailed Company Information

- a) List all key professional personnel to be assigned to the performance of the contract, including the percent of time and number of hours they will spend on the contract. Resumes describing the qualifications of personnel to be utilized in the performance of the contract must show, at a minimum:

- Person's name
 - Highest college degree held
 - Position in the firm
 - Total years with the firm and total years in the accounting profession
 - Type of experience with the firm
 - List of continuing professional education courses completed in the last three years
 - Experience performing audits of pension, fiduciary, or endowment funds with net assets greater than \$1 billion
 - Experience performing state government financial and compliance audits in New Mexico
 - Experience relating to audits of investments
- b) Describe your procedures for internal and external training for auditors specific to pension funds.
- c) Describe specific procedures your firm would follow in the event any professional staff assigned to this account should leave the firm.
- d) Provide specific details on the following for the past three years (2018-2021):
- Any restrictions imposed by the Office of the State Auditor that would impact this engagement.
 - Your firm's timeliness in reference to the State Auditor's report due dates.
 - Your firm's familiarity with State Auditor rules and regulations.
- e) Provide a copy of the firm's most recent external quality control review.
- f) Describe your staff's knowledge and experience performing information system assessments and test work and identify the type of audit work your firm has performed in this area. Identify information system audit specialists who will be assigned to the performance of this contract.
- g) Provide your proposed general audit work plan, which supports your ability to meet the State Auditor's deadline for submission of the audit report (no later than sixty days after the State Auditor receives notification from the Financial Control Division to the effect that an agency's books and records are ready and available for audit). In as much as the RFP calls for a proposal for a multi-year contract of up to three (3) years, describe the approach for planning and conducting the work efforts of subsequent years.
- h) Provide a detailed description of your firm's recent experience in auditing GASB 67 and 68.
- i) List audit work related to investments for the past five years, specifically noting any work related to pension funds.
- j) Provide your policies and procedures addressing data security, encryption policies and computer security training for employees.

- k) If your firm has ever failed to submit an audit by the required deadline to any oversight agency, such as a state auditor's office, please provide a brief explanation of the circumstances.

3. Client References

- a) Provide a statement of Offeror's relevant experience and expertise in the auditing of public funds. Include client's name, address, phone number, contact name and title for relevant jobs performed over the last three years.
- b) Provide a statement of Offeror's relevant experience and expertise in the area of state and local government financial and compliance audits. Include client's name, address, phone number, contact name and title for relevant jobs performed over the last three years.

Provide a statement of Offeror's relevant experience and expertise in the area of public and private pension funds, including knowledge of investment practices, fiscal agent transaction, and computer-based information systems. Also, provide a statement of Offeror's relevant experience and expertise regarding Government Accounting Standards Board (GASB) pronouncements issued specifically for pension fund accounting. Include client's name, address, phone number, contact name and title for relevant jobs performed by Offeror over the last three years.

4. Minimum Qualifications

Each Offeror must certify that it meets all the following minimum qualifications. In order to so certify, Offerors shall complete, sign, and submit Appendix F. Failure to meet and certify to the following shall result in the rejection of the proposal for no responsiveness.

- a) The Offeror must be a firm registered with the New Mexico State Board of Public Accountancy and hold a current permit from such Board to practice as a certified public accountant. (The Offeror shall certify it has met this requirement by signing the certification on pages 1 and 2 of Appendix F to this RFP).
- b) The Offeror must have submitted a complete, accepted and approved firm profile to the State Auditor in accordance with 2.2.2 NMAC, Section 8.A. The firm must be a current approved firm on the State Auditor's list of approved firms for financial audits. (The Offeror shall certify that it has met this requirement by signing the certification on pages 1 and 2 of Appendix F to this RFP.)
- c) The Offeror must maintain professional liability insurance, in accordance with Section 8.I of 2.2.2 NMAC, covering any error or omission committed during the term of any contract awarded to it under this RFP. (The Offeror shall certify that it has met this requirement by signing the certification on pages 1 and 2 of Appendix F to this RFP and shall attach proof of insurance coverage to its proposal.)

- d) The Offeror must have an internal quality control system in place and external quality control reviews conducted in accordance with Section 14.B of 2.2.2 NMAC. (The Offeror shall certify that it has met this requirement by signing the certification on pages 1 and 2 of Appendix F to this RFP and shall attach a copy of its most recent external quality control review to the proposal.)
- e) Those persons who are employed by the Offeror and would be responsible for planning, directing and conducting a substantial portion of the field work or reporting for the audit that is the subject of this RFP must be in compliance with the continuing education requirements of Section 14.A of 2.2.2 NMAC. (The Offeror shall certify that it has met this requirement by signing the certification on pages 1 and 2 of Appendix F to this RFP.)
- f) The Offeror must be a firm that is independent and warrants that it presently has no interest and shall not acquire interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under any contract entered into by PERA and the Offeror. (The Offeror shall certify that it has met this requirement by signing the certification on page 1 and 2 of Appendix F to this RFP.)
- g) The Offeror must have a positive net worth as of the submission date of its proposal and shall maintain a positive net worth for the duration of any contract entered into with PERA. (The Offeror shall certify that it has met this requirement by signing the certification on page 1 and 2 of Appendix F to this RFP.)
- h) The Offeror must take all reasonable and commercially accepted measures to ensure the security and confidentiality of information and data provided by PERA as stated in the audit contract. (The Offeror shall certify that it has met this requirement by signing the certification on page 1 and 2 of Appendix F to this RFP.)

Each Offeror must demonstrate knowledge, ability, and experience in the following:

- a) The Governmental Accounting Standards and minimum of three years of experience conducting audits using Governmental Accounting Standards Board Statement No. 67, Governmental Accounting Standards Board Statement No. 68 (GASB 67 and GASB 68), and Governmental Accounting Standards Board Statement No. 72.
- b) Auditing pension funds with net assets exceeding \$1 billion for at least three years and the staff with that experience and knowledge must be assigned to the audit.
- c) Auditing the following classes of investments:
 - Equity securities
 - Fixed income securities: MBS, ABS, corporate bonds, and structured products
 - Private securities: private equity, real assets, and real estate
 - Securities lending and collateral
 - Currencies
 - Derivatives: options, SWAPS, futures, and forwards

Experience auditing these investments may be gained at a variety of different entities, such as mutual funds, insurance companies, banks, REITs, and investment portfolios of a company or public pension fund.

C. BUSINESS SPECIFICATIONS

1. Financial Stability

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g., D & B report).

2. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX E, and to return a signed, unaltered form will result in Offeror's disqualification.**

3. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

4. Cost

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by hours and cost for consulting services should be listed as per Section 3.C of the sample contract (Appendix C). Any out-of-pocket expenses, including travel, should be included in the fee proposal. All amounts represented in the fee proposal should be considered as "not to exceed" amounts.

5. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors **MUST** include a copy, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factors – correspond to section IV.B and IV.C	Points Available
B. EVALUATION FACTORS	
B. 1. Company Background and General Description	50
B. 2. Detailed Company Information	150
B. 3. Client References	50
B. 4. Minimum Qualifications	150
C. 1. Financial Stability	Pass/Fail
C. 2. Letter Of Transmittal	Pass/Fail
C. 3. Signed Campaign Contribution Disclosure Form	Pass/Fail
C. 4. Cost	100
TOTAL	500 points
C. 5. New Mexico Preference - Resident Vendor Points per Section IV C. 6	
C. 5. New Mexico Preference - Resident Veterans Points per Section IV C.6	

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

B.1 Company Background and General Description (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. In addition, points will be awarded based on Offeror's candid and well-thought-out response to firms' history, the firm's ownership, financial condition, if there is any conflicts of interest and the professional liability coverage.

B.2 Detailed Company Information (See Table 1)

Points will be awarded based on the thoroughness and clarity of the response in this Section. The Evaluation Committee will also weigh the relevancy of key professional personnel assigned to the contract; the offeror's training related to pension funds, the procedures that offeror's will follow if a professional staff leaves, if any restrictions have been imposed by OSA to the offeror, the offeror's most external quality control, and the offeror's policies and training related to computer security. In addition, the committee will award based on the Offerors experience in performing information system assessments, the

proposed audit work plan, experience in auditing GASB 67 and 68, and investment experience. In addition, points will be awarded based on Offeror's candid response to whether if the firm as ever failed to submit an audit by the deadline.

B.3 Client References (See Table 1)

Points will be awarded based upon on the thoroughness and clarity of the response in this Section. Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be present on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information.

B.4 Minimum Qualifications (See Table 1)

Failure to meet and certify to the Minimum Qualifications shall result in the rejection of the proposal for no responsiveness. Points will be awarded based on the thoroughness and clarity of the response in this Section. The Evaluation Committee will also weigh the offeror's knowledge, ability and experience in the Governmental Accounting Standards, auditing pension funds, and auditing investments.

C.1 Financial Stability (See Table 1)

Pass/Fail only. No points assigned.

C.2 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

C.3 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

C.4 Cost (See Table 1)

The evaluation of each Offeror's cost proposal will be conducted using the following formula

$$\frac{\text{Lowest Responsive Offeror's Cost}}{\text{Each Offeror's Cost}} \times \text{Available Award Points}$$

C.5 New Mexico Preferences

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

A. New Mexico Resident Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Business is 5% of the total points available in this RFP.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

REQUEST FOR PROPOSAL

Financial and Compliance Audit

RFP#: 36600-2022-00003

This Acknowledgement of Receipt Form should be signed and submitted no later than **February 14, 2022**. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

In acknowledgement of receipt of this Request for Proposal, the undersigned agrees that he or she has received a complete copy of the RFP, beginning with the title page, and ending with APPENDIX F.

The name and address below will be used for all correspondence related to the Request for Proposal.

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Submit Acknowledgement of Receipt Form to:

To: Zarina Martinez

E-mail: zarina.martinez2@state.nm.us

Subject Line: Financial and Compliance Audit RFP# 36600-2022-00003

APPENDIX B

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, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled 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 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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 a 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 [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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.

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(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)

APPENDIX C

COST RESPONSE FORM

Provide your fee proposal for the subject services for one year that any professional services agreement entered into by PERA may be in effect. The fee proposal shall include hourly rates the Contractor intends to charge PERA for providing the services specified in the Scope of Work, including New Mexico gross receipts taxes (if applicable). Include any out-of-pocket expenses, such as travel expenses, under Other Expenses. Specify whether travel time is billable at Contractor's hourly rates.

	Year 1	Year 2	Year 3	Year 4
1. Total estimated hours to complete audit and CAFR review (separate items per Sec 3.C of sample contract (Appendix G))				
2. Hourly rate				
3. Audit cost (1 X 2)				
4. Out-of-pocket expenses, including travel				
5. Audit cost including expenses (3 + 4)				
6. Applicable gross receipts tax (specify rate _____)				
7. Total audit cost (5 + 6)				

All costs represented in this cost proposal should be considered as “not to exceed” amounts.

APPENDIX D

LETTER OF TRANSMITTAL FORM

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!**
(N/A, None, Does not apply, etc. are acceptable responses.)

RFP#: 36600-2022-00003

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED ID#	
NM CRS#	

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name			
Title			
E-mail			
Telephone			

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns.
If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Use of subcontractors (Select one):

____ No subcontractors will be used in the performance of any resultant contract, OR
____ The following subcontractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)

(Attach extra sheets, as needed)

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

_____, 20_____
Authorized Signature and Date (Must be signed by the individual identified in item #2.A, above.)

APPENDIX E

Sample Contract

STATE OF NEW MEXICO AUDIT CONTRACT

(State Agencies with DFA Approval)

{{name}}

hereinafter referred to as the "Agency," and

{{contractorName}}

hereinafter referred to as the "Contractor," agree:

As required by the Audit Rule, NMAC Section 2.2.2.1 et seq., Contractor agrees to, and shall, inform the Agency of any restriction placed on Contractor by the Office of the State Auditor pursuant to NMAC Section 2.2.2.8, and whether the Contractor is eligible to enter into this Contract despite the restriction.

1. **SCOPE OF WORK** (Include in Paragraph 26 any expansion of scope)

- A. The Contractor shall conduct a financial and compliance audit of the Agency for Fiscal Year {{contractForFiscalYear}} in accordance with auditing standards generally accepted in the United States of America, *Government Auditing Standards, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, the Audit Act and the Audit Rule (NMAC Section 2.2.2.1 et seq.).

2. **DELIVERY AND REPRODUCTION**

- A. In order to meet the delivery terms of this Contract, the Contractor shall deliver the following documents to the State Auditor no later than **sixty days** after the Financial Control Division of the Department of Finance and Administration (FCD of DFA) provides the State Auditor with notice that the Agency's books and records are ready and available for audit, and in any event no later than the deadline set forth for the Agency in NMAC Section 2.2.2.9:
1. an organized, bound and paginated hard copy of the Agency's audit report for review;
 2. a copy of the signed management representation letter provided to the IPA by the Agency as required by AU-C580; and
 3. a copy of the completed State Auditor Report Review Guide available at www.osanm.org;
- B. In accordance with FCD requirements, the Agency, with the help of the Contractor, shall identify a schedule of audit deliverables and agreed-to milestones for the audit to ensure that the Agency's books and records are ready and available for audit and the Contractor delivers services on time. The deadline of sixty days shall be based on the schedule of audit deliverables and agreed upon milestones; however, the deadline **shall not extend beyond the deadline set forth for the Agency in NMAC Section 2.2.2.9**. This requirement does not prevent the Contractor from performing interim audit work prior to receipt of the DFA notice of agency preparedness.
- C. Reports postmarked by the Agency's due date will be considered received by the due date for purposes of NMAC Section 2.2.2.9. Unfinished or excessively deficient reports will not satisfy this requirement; such reports will be rejected and returned to the Contractor and the State Auditor may take action in accordance with NMAC Section 2.2.2.13. If the State Auditor does not receive copies of the management representation letter, and the completed Report Review Guide with the audit report or prior to submittal of the audit report, the State Auditor will not consider the report submitted to the State Auditor.
- D. As soon as the Contractor becomes aware that circumstances exist that will make the Agency's audit report late, the Contractor shall immediately provide written notification of the situation to the State Auditor. The notification shall include an explanation regarding why the audit report will be late, when the IPA expects to submit the report and a concurring signature by the Agency.
- E. Pursuant to NMAC Section 2.2.2.10, the Contractor shall prepare a written and dated engagement letter that identifies the specific responsibilities of the Contractor and the Agency.

F. After its review of the audit report pursuant to NMAC Section 2.2.2.13, the State Auditor shall authorize the Contractor to print and submit the final audit report. Within five business days after the date of the authorization to print and submit the final audit report, the Contractor shall provide the State Auditor an electronic version of the audit report, in PDF format, and the electronic copy of the Excel version of the Summary of Findings Form, Vendor Schedule, Fund Balances, and any GASB 77 data (if applicable). After the State Auditor officially releases the audit report by issuance of a release letter, the Contractor shall deliver numberOfCopies copies of the audit report to the Agency. The Agency or IPA shall ensure that every member of the Agency's governing authority shall receive a copy of the report.

G. The Agency, upon delivery of its audit report, shall submit to the Federal Audit Clearinghouse (FAC) the completed data collection form and the reporting package described in Section 200.512 of Uniform Guidance for Federal Awards. The submission is required to be made within 30 calendar days of receipt of the auditor's report, or nine months after the end of the audit period.

3. COMPENSATION

A. The total amount payable by the Agency to the Contractor under this Contract shall not exceed nmGRTNotExceed including applicable gross receipts tax.

B. Contractor agrees not to, and shall not, perform any services in furtherance of this Contract prior to approval by the State Auditor. Contractor acknowledges and agrees that it will not be entitled to payment or compensation for any services performed by Contractor pursuant to this Contract prior to approval by the State Auditor.

C. Total Compensation will consist of the following:

SERVICES	AMOUNTS
(1) Financial statement audit	<u>financialStmntAudit</u>
(2) Federal single audit	<u>fedSingleAudit</u>
(3) Financial statement preparation	<u>financialStmntPrep</u>
(4) Other nonaudit services, such as depreciation schedule updates	<u>otherNonauditServices</u>
(5) Other (i.e., foundations or other component units, specifically identified)	<u>otherServices</u>

Gross Receipts Tax = grossReceiptsTax

Total Compensation = totalCompensation including applicable gross receipts tax

D. The Agency shall pay the Contractor the New Mexico gross receipts tax levied on the amounts payable under this Contract and invoiced by the Contractor. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below.

E. The State Auditor may authorize progress payments to the Contractor by the Agency; provided that the authorization is based upon evidence of the percentage of audit work completed as of the date of the request for partial payment. Progress payments up to 70% do not require State Auditor approval, provided that the Agency certifies receipt of services. The Agency must monitor audit progress and make progress payments only up to the percentage that the audit is completed prior to making such payment. Progress payments of 70% or more but less than or equal to 90% require State Auditor approval after being approved by the Agency. If requested by the State Auditor, the Agency shall provide a copy of the approved progress billings. The State Auditor may allow only the first 50% of progress payments to be made without State Auditor approval if the Contractor's previous audits were submitted after the due date. Final payment for services rendered by the Contractor shall not be made until a determination and written finding is made by the State Auditor in the release letter that the audit has been made in a competent manner in accordance with the provisions of this Contract and applicable rules of the State Auditor.

4. TERM. THIS CONTRACT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE STATE AUDITOR AND THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. Unless terminated pursuant to Paragraphs 5 or 19, this Contract shall terminate one calendar year after the date on which it is signed by the Department of Finance and Administration.

5. TERMINATION, BREACH AND REMEDIES

A. This Contract may be terminated:

1. By either party without cause, upon written notice delivered to the other party and the State Auditor at least ten (10) days prior to the intended date of termination.
2. By either party, immediately upon written notice delivered to the other party and the State Auditor, if a material breach of any of the terms of this Contract occurs. Unjustified failure to deliver the report in accordance with Paragraph 2 shall constitute a material breach of this Contract.
3. By the Agency pursuant to Paragraph 19, immediately upon written notice to the Contractor and the State Auditor.
4. By the State Auditor, immediately upon written notice to the Contractor and the Agency after determining that the audit has been unduly delayed, or for any other reason.

- B. By termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. If the Agency or the State Auditor terminates this Contract, the Contractor shall be entitled to compensation for work performed prior to termination in the amount of earned, but not yet paid, progress payments, if any, that the State Auditor has authorized to the extent required by Paragraph 3(E). If the Contractor terminates this Contract for any reason other than Agency's breach of this Contract, the Contractor shall repay to the Agency the full amount of any progress payments for work performed under the terms of this Contract.
- C. Pursuant to NMAC Section 2.2.2.8, the State Auditor may disqualify the Contractor from eligibility to contract for audit services with the State of New Mexico if the Contractor knowingly makes false statements, false assurances or false disclosures under this Contract. The State Auditor on behalf of the Agency or the Agency may bring a civil action for damages or any other relief against a Contractor for a material breach of this Contract.
- D. THE REMEDIES HEREIN ARE NOT EXCLUSIVE, AND NOTHING IN THIS SECTION 5 WAIVES OTHER LEGAL RIGHTS AND REMEDIES OF THE PARTIES.

6. STATUS OF CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The 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 Agency as a result of this Contract. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed under this Contract unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract.

8. SUBCONTRACTING

The Contractor shall not subcontract any portion of the services to be performed under this Contract without the prior written approval of the Agency and the State Auditor. An agreement between the Contractor and a subcontractor to subcontract any portion of the services under this Contract shall be completed on a form prescribed by the State Auditor. The agreement shall be an amendment to this Contract and shall specify the portion of the audit services to be performed by the subcontractor, how the responsibility for the audit will be shared between the Contractor and the subcontractor, the party responsible for signing the audit report and the method by which the subcontractor will be paid. Pursuant to NMAC Section 2.2.2.8, the Contractor may subcontract only with independent public accounting firms that are on the State Auditor's List of Approved Firms, and that are not otherwise restricted by the Office from entering into such a contract.

9. RECORDS

The Contractor shall maintain detailed time records that indicate the date, time, and nature of services rendered during the term of this Contract. The Contractor shall retain the records for a period of at least five (5) years after the date of final payment under this contract. The records shall be subject to inspection by the Agency and the State Auditor. The Agency and the State Auditor shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the right of the Agency or the State Auditor on behalf of the Agency to recover excessive or illegal payments.

10. RELEASE

The Contractor, upon receiving final payment of the amounts due under the Contract, releases the State Auditor, the Agency, their respective officers and employees and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract. This paragraph does not release the Contractor from any liabilities, claims or obligations whatsoever arising from or under this Contract.

11. CONFIDENTIALITY

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor, except in accordance with this Contract or applicable standards, without the prior written approval of the Agency and the State Auditor.

12. PRODUCT OF SERVICES; COPYRIGHT AND REPORT USE

Nothing developed or produced, in whole or in part, by the Contractor under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. The Agency and the State Auditor may post an audited financial statement on their respective websites once it is publicly released by the State Auditor. The Contractor agrees that the FCD of DFA is free to use the audited financial statements in the statewide Comprehensive Annual Financial Report (CAFR) and that the Contractor's audit report may be relied upon during the audit of the statewide CAFR, if applicable. However DFA should not provide to any third party, other than the CAFR auditor, the draft audit report or its opinion letters or findings.

13. CONFLICT OF INTEREST

The Contractor represents and warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. Each of the Contractor and the Agency certifies that it has followed the requirements of the Governmental Conduct Act, Section 10-16-1, et seq., NMSA 1978, regarding contracting with a public officer, state employee or former state employee, as required by the applicable professional standards.

14. **INDEPENDENCE**

The Contractor represents and warrants its personal, external and organizational independence from the Agency in accordance with the *Government Auditing Standards 2011 Revision*, issued by the Comptroller General of the United States, and NMAC Section 2.2.2.8. The Contractor shall immediately notify the State Auditor and the Agency in writing if any impairment to the Contractor's independence occurs or may occur during the period of this Contract.

15. **AMENDMENT**

This Contract shall not be altered, changed or amended except by prior written agreement of the parties and with the prior written approval of the State Auditor. Any amendments to this Contract shall comply with the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978.

16. **MERGER**

This Contract supersedes all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract. Contractor and Agency shall enter into and execute an engagement letter pursuant to NMAC Section 2.2.2.10, consistent with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAGAS). **The engagement letter and any associated documentation included with or referenced in the engagement letter shall not be interpreted to amend this Contract. Conflicts between the engagement letter and this Contract are governed by this Contract, and shall be resolved accordingly.**

17. **APPLICABLE LAW**

The laws of the State of New Mexico shall govern this Contract. By execution of this Contract, Contractor irrevocably consents to the exclusive personal jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising from or related to this Contract.

18. **AGENCY BOOKS AND RECORDS**

The Agency is responsible for maintaining control of all books and records at all times and the Contractor shall not remove any books and records from the Agency's possession for any reason.

19. **APPROPRIATIONS**

The terms of this Contract are contingent upon sufficient appropriations and authorization being made by the legislature or the Agency's governing body for the performance of this Contract. If sufficient appropriations and authorization are not made by the legislature or the Agency's governing body, this Contract shall terminate upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. This section of the Contract does not supersede the Agency's requirement to have an annual audit pursuant to Section 12-6-3(A) NMSA 1978.

20. **PENALTIES FOR VIOLATION OF LAW**

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

21. **EQUAL OPPORTUNITY COMPLIANCE**

The Contractor shall abide by all federal and state laws, 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, rules, regulations and orders, the Contractor assures that no person in the United States shall, on the grounds of race, age, religion, color, national origin, ancestry, sex, 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 Contract. If the Contractor is found not to be in compliance with these requirements during the life of this Contract, the Contractor shall take appropriate steps to correct these deficiencies.

22. **WORKING PAPERS**

- A. The Contractor shall retain its working papers of the Agency's audit conducted pursuant to this Contract for a period of at least five (5) years after the date shown on the opinion letter of the audit report, or longer if requested by the federal cognizant agency for audit, oversight agency for audit, pass through-entity or the State Auditor. The State Auditor shall have access to the working papers at the State Auditor's discretion. When requested by the State Auditor, the Contractor shall deliver the original or clear, legible copies of all working papers to the requesting entity.
- B. The Contractor should follow the guidance of AU-C 210 A.27 to A.31 and AU-C 510 .A3 to .A11 in communications with the predecessor auditor and to obtain information from the predecessor auditor's audit documentation.

23. **DESIGNATED ON-SITE STAFF**

The Contractor's on-site individual auditor responsible for supervision of work and completion of the audit is {{contractorOnSiteAuditor}}. The Contractor shall notify the Agency and the State Auditor in writing of any changes in staff assigned to perform the audit.

24. **INVALID TERM OR CONDITION**

If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected.

25. **EMPLOYEE PAY EQUITY REPORTING**

A. If it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification at any time during the term of this Contract, the Contractor shall complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If the Contractor has (250) or more employees the Contractor shall complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that are extended beyond one (1) calendar year, the Contractor shall also complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. If the Contractor does not meet the size requirement for reporting a contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the Contractor shall provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. The Contractor shall also impose this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. If one or more subcontractor does not meet the size requirement for reporting a contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the Contractor shall submit the required report for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. The Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. The Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

B. If this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

26. **OTHER PROVISIONS**

{{otherProvisions}}

SIGNATURE PAGE

This Contract is made effective as of the date of the signature of the Department of Finance and Administration.

AGENCY

{{name}}

PRINTED
NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

CONTRACTOR

{{contractorName}}

PRINTED
NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

STATE AGENCY

BY: _____

TITLE: GENERAL COUNSEL

DATE: _____

AGENCY CFO

BY: _____

TITLE: CHIEF FINANCIAL OFFICER

DATE: _____

This Contract has been approved by:

DEPT. OF FINANCE &
ADMINISTRATION
CONTRACTS REVIEW BUREAU

BY: _____ DATE: _____

DATE: _____

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

ID No. _____
By: _____
Date: _____