

STATE OF NEW MEXICO

DIVISION OF VOCATIONAL REHABILITATION
& COMMISSION FOR THE BLIND



REQUEST FOR APPLICATIONS

VOCATIONAL REHABILITATION IMPARTIAL HEARING OFFICERS

February 1, 2021

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR APPLICATIONS

The New Mexico Public Education Department, Division of Vocational Rehabilitation (“NMDVR”) and the New Mexico Commission for the Blind (“NMCB”) request applications from licensed attorneys to serve as due process hearing officers for fair hearing requests submitted by applicants and recipients of vocational rehabilitation services pursuant to the Federal Rehabilitation Act of 1973 (“RA”), as amended by the Workforce Innovation and Opportunity Act (2014) (“WIOA”).

Vocational Rehabilitation (VR) is a State and Federally funded program designed to help eligible individuals with documented disabilities find suitable employment. VR is a voluntary program and services persons who want to work. The RA and 34 CFR § 361.57 requires the state to ensure that a due process hearing before an impartial administrative hearing officer is afforded to an applicant or recipient of VR services who is dissatisfied with any determination made by personnel of the NMDVR or NMCB that affects the provision of vocational rehabilitation services. Federal regulation 34 CFR § 361.57, and the state’s implementing regulation, 6.101.2 NMAC, sets forth the requirements for a due process hearing.

B. BACKGROUND INFORMATION

Under the RA, the NMDVR and NMCB receive federal funds to operate a statewide comprehensive vocational rehabilitation program. Through this program, the NMDVR and NMCB work closely with individuals with disabilities to assess their strengths, capabilities, and interests to create an individualized plan for employment with the goal of preparing such individuals for gainful employment.

The RA, and its implementing regulations, require the NMDVR and NMCB to offer mediation as an option for resolving disagreements between the NMDVR and applicants/recipients of vocational rehabilitation services. Where mediation is not attempted or does not resolve a dispute, the matter may be adjudicated by an impartial hearing officer. An impartial hearing officer is charged with holding a hearing within 60 days of an applicant’s or recipient’s request for review, unless the parties agree to a specific extension of time or a resolution is achieved prior to the 60th day. The impartial hearing officer must provide the applicant or recipient with an opportunity to present witnesses during the hearing and to examine all other relevant evidence. Following the hearing, the hearing officer must submit a written decision containing findings of fact and grounds for the decision. The decision must be made in accordance with the State Plan, the RA, federal vocational rehabilitation regulations, and state regulations and policies.

An “impartial hearing officer” for purposes of adjudicating disputes under the RA, is defined in 34 CFR § 361.5(c)(24) as an individual who:

- (A) Is not an employee of a public agency;

- (B) Is not a member of the State Rehabilitation Council;
- (C) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;
- (D) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the State Plan, and the federal and state regulations governing the provision of services;
- (E) Has received training with respect to the performance of official duties; and
- (F) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

Although previous experience in the area of vocational rehabilitation and/or disability law is highly desirable, all applications submitted by candidates will be evaluated based on the totality of the selection criteria described in this Request for Applications (“RFA”). To ensure that qualified, impartial hearing officers are available statewide for persons with disabilities disputes, the NMDVR and NMCB propose to award contracts to candidates from all geographic locations in New Mexico.

The NMDVR and NMCB may award this procurement to multiple successful Offerors who will be assigned to adjudicate hearings on an as-needed basis at a fixed hourly rate. The rate will be \$150.00 per hour for hearing-related services and training, with a reduced rate of \$50.00 per hour for travel, plus travel and training expenses as well as applicable gross receipts taxes. The assignment of hearing officers to individual cases will be made in accordance with 34 CFR §361.57(f).

C. SCOPE OF WORK

The Hearing Officer shall:

- A. Be a licensed attorney in good standing;
- B. Have two years of experience serving as a hearing officer (preferred) or at least four years of experience in the area of administrative law;
- C. Have a thorough understanding of the requirements of a hearing officer, as enumerated in the RA as well as applicable federal and state rules and regulations, including:

34 CFR Part 361

34 CFR § 361.57

34 CFR § 361.5(c)(24)

6.101.2 NMAC

- D. Have an understanding of the NMDVR's and NMCB's vocational rehabilitation programs and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services;
- E. Conduct hearings in a manner consistent with the RA as amended, federal rules and regulations as established in 34 CFR Part 361, the NMDVR's and NMCB's Code of Conduct Policy, as well as any policies or procedures published by the NMDVR and NMCB;
- F. Conduct a pre-hearing conference on a date reached by mutual agreement between the parties;
- G. Conduct a hearing within 60 days of an applicant's or recipient's request for review of a determination made by NMDVR or NMCB that affects the provision of vocational rehabilitation services, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;
- H. Allow the parties the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;
- I. Administer oaths and affirmations to the witnesses;
- J. Regulate the course and conduct of the hearing;
- K. Assure that all properly raised and relevant issues are considered;
- L. Rule on the introduction of testimony and other evidence (the technical rules of evidence do not apply to these types of proceedings);
- M. Assure that the proceedings are properly recorded;
- N. Maintain a complete and accurate record of the hearing, including all filed pleadings, exhibits, and admitted evidence;
- O. Consider and rule upon all procedural and other motions appropriate to adjudicative proceedings;
- P. Review the evidence and testimony;
- Q. Within 30 days of completion of the hearing, issue a written decision containing findings of fact and grounds for the decision; the decision shall be made in accordance with the State Plan, the RA, federal vocational rehabilitation regulations, and state regulations and policies;

- R. Within 30 days of completion of the hearing, provide the NMDVR or NMCB, as appropriate, with a complete record of the hearing;
- S. Cooperate with the NMDVR or NMCB, as appropriate, and the parties in any subsequent civil action brought to request review of the hearing officer's decision;
- T. Participate in all trainings mandated by NMDVR and NMCB. Such trainings shall be a billable activity, which may be billed at a rate of \$150 per hour. The NMDVR and NMCB, as applicable, will also pay all costs associated with the training;
- U. Send travel reimbursement and service bills to the NMDVR (Administrative Services Unit) or NMCB, as appropriate, within ten (10) calendar days of the completion of the hearing; and
- V. Accept all assignments as assigned by the NMDVR or NMCB unless there is a conflict of interest or extenuating circumstances.

D. SCOPE OF PROCUREMENT

To ensure that qualified impartial hearing officers are available, the NMDVR and NMCB propose to award contracts to Offerors from all geographic locations in New Mexico and bordering states. The NMDVR and NMCB propose to award each successful Offeror a one-year contract renewable at the NMDVR's and NMCB's option in one-year increments for three additional years, to provide services as needed at a fixed hourly rate of \$150.00, with a reduced rate of \$50.00 per hour for travel, and including travel and training expenses as well as applicable gross receipts taxes. In accordance with NMSA 1978, § 13-1-150, the contract term, including extensions and renewals, shall not exceed four years. The total compensation under any contract that results from this RFA shall not exceed \$60,000, including all extensions and renewals. The NMDVR, NMCB or their respective designees, as appropriate, will compensate the hearing officer for attending any mandated training in accordance with the Per Diem and Mileage Act, NMSA 1978, Sections 10-8-1 through -8.

E. CONTRACTS MANAGER

The NMDVR and NMCB have designated the Contracts Manager as the responsible party for conducting this request for applications. His contact information is listed below:

Joseph "Joby" Padilla
Contracts and Purchasing Manager
New Mexico Division of Vocational Rehabilitation
2935 Rodeo Park Drive East
Santa Fe, NM, 87505
Phone: (505) 470-5681
Email: joseph.padilla@state.nm.us

Offerors may contact **ONLY** the Contracts Manager regarding the request for applications. Other State employees do not have the authority to respond on behalf of the NMDVR or NMCB.

F. DEFINITION OF TERMS

This section contains definitions and abbreviations that are used throughout this procurement document.

"Agency" means the New Mexico Division of Vocational Rehabilitation (NMDVR), Rehabilitation Services Unit (RSU) and the New Mexico Commission for the Blind (NMCB).

"Close of Business" means 5:00 p.m. Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

"Contract" means a written agreement for the procurement of items of tangible personal property or services.

"Contract Award" means the final required state agency signature on the contract(s) resulting from this procurement.

"Contractor" means a successful Offeror who enters into a binding contract.

"Designee" means the NMDVR-RSU designee.

"Determination" means the written documentation of a decision by the NMDVR RSU or NMCB including findings of fact supporting a decision. A determination becomes part of the NMDVR or NMCB procurement file.

"Desirable" The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

"Evaluation Committee" means a body appointed by management of NMDVR and NMCB to perform the evaluation of Offeror applications.

"Finalist" is defined as an Offeror who meets all the mandatory specifications of this Request for Applications and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

"Mandatory" The terms "must", "shall", "will", "is required", or "are required" identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the Offerors application.

"Offeror" is any person, corporation, or partnership who chooses to submit an application.

"Contract Manager" means the person or designee authorized by the NMDVR and NMCB to manage or administer the evaluation of competitive applications.

"Request for Applications" or "**RFA**" means all documents, including those attached or incorporated by reference, used for soliciting applications.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFA contains the schedule for the procurement and describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Contracts Manager will make reasonable efforts to adhere to the following schedule:

<u>Action</u>	<u>Responsibility</u>	<u>Target Date</u>
1. Issuance of RFA	NMDVR & NMCB	February 1, 2021
2. Submission of Application	Offeror	March 17, 2021
3. Application Evaluation	Evaluation Committee	March 22, 2021 through March 26, 2021
4. Selection of Finalists	Evaluation Committee	March 31, 2021
5. Contract Negotiations (at Committee's option)	Offeror	April 9, 2021
6. Contract Awards	NMDVR & NMCB	April 30, 2021

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

1. Issuance of RFA

This RFA is being issued by the New Mexico Division of Vocational Rehabilitation and the New Mexico Commission for the Blind.

2. Submission of Applications

ALL OFFEROR APPLICATIONS MUST BE SUBMITTED ELECTRONICALLY FOR REVIEW AND EVALUATION BY THE CONTRACTS MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT SAVINGS TIME ON WEDNESDAY, MARCH 17, 2021.

Applications received after this deadline will not be accepted. Applications must be sent to the Contracts Manager at the email address listed in Section I, Paragraph E. The date and time of submission will be recorded on each application. Applications must clearly indicate that they are in response to the Request for Applications for hearing officer services. Applications submitted by facsimile will not be accepted. A public log will be kept of the names of all Offerors that submit applications. The contents of an application shall not be disclosed to competing Offerors prior to the contract award.

3. Application Evaluation

The evaluation of applications will be performed by an Evaluation Committee appointed by NMDVR and NMCB management. This process will take place between Monday, March 22 and Friday, March 26, 2021. During this time, the Contracts Manager may initiate discussions with Offerors who submit responsive or potentially responsive applications for the purpose of clarifying aspects of the applications, but applications may be accepted and evaluated without such discussion. Discussions **SHALL NOT** be initiated by the Offerors.

4. Selection of Finalists

The Evaluation Committee will select, and the Contracts Manager will notify, the finalist Offerors on or about Wednesday, March 31, 2021. Only finalists will be invited to participate in the subsequent steps of the process.

5. Contract Negotiations (at Evaluation Committee's Option)

The NMDVR and NMCB, at their discretion, will enter into professional services contracts with Offerors selected in response to this RFA and with whom mutually agreeable terms can be reached. Such contracts will be executed on or about Friday, April 9, 2021.

6. Contract Awards

After review of the Evaluation Committee Report, the recommendations of NMDVR and NMCB management and obtaining the signed contract(s), the Contracts Manager will award the contracts on Friday, April 30, 2021. This date is subject to change at the discretion of the Executive Director of the NMDVR and NMCB.

A contract shall be awarded to the Offeror or Offerors whose application is most advantageous to the NMDVR and NMCB, taking into consideration the evaluation factors set forth in the RFA. **The most advantageous application may or may not have received the most points.**

The award is subject to appropriate state approvals.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Each Offeror shall submit only one application.

B. FORM OF SUBMISSION

Offerors shall submit their application electronically to the Contracts Manager at the email address specified in Section I, Paragraph E, on or before the closing date and time for receipt of applications.

C. APPLICATION FORMAT

All applications must be typewritten on standard 8 1/2 x 11 pages with tabs delineating each section.

1. Applications submitted must not exceed 15 pages, **excluding** the cover page, acceptance/authorization form (Appendix A to this RFA) and writing sample(s), but **including** any letters of reference submitted pursuant to Item 4 below and the statement required under Item 5 below. Applications that exceed this page limit may be eliminated from consideration.
2. Cover Page. Applications must include a cover page that clearly states the name, physical or mailing address, email address, telephone number(s), and fax number of the Offeror submitting the application.
3. Application Content - Accurate and complete information is a criterion for selection. The application must respond to each item of qualification clearly, specifically and completely in the order listed under "Qualifications and Selection," above. After responding to these items, the Offeror may add any additional information he/she chooses that may further describe his/her ability to follow the requirements and conduct the activities described above under "Scope of Work." Applicants must also complete Appendices A and B.

4. An Offeror may submit up to three reference letters to indicate his/her level of professionalism and demonstrate his/her ability to implement the activities in the RFA. Such letters will count as part of the 15-page limit.
5. Each Offeror must provide a written statement of qualifications and experience and the disclosure of any past and/or current affiliations that may present the appearance of a conflict of interest. This statement must be a separate stand-alone document but will count as part of the 15-page application limit. As noted, this statement may be made available to the parties to any dispute to which a contractor is assigned and to members of the public upon request under the Inspection of Public Records Act.
6. Within each section of the application, Offerors should address the items in the order in which they appear in this RFA. All forms provided in the RFA must be thoroughly completed and included in the appropriate application section.

Any application that does not adhere to these requirements may be rejected as being non-responsive.

IV. QUALIFICATIONS AND SELECTION

A. MANDATORY QUALIFICATIONS

The following are necessary qualifications and requirements for impartial hearing officers:

1. Licensure, in good standing, to practice law in the State of New Mexico or a bordering state;
2. Have two years of experience serving as a hearing officer (preferred) or at least four years of experience in the area of administrative law;
3. Have a thorough understanding of the requirements of a hearing officer, as enumerated in the RA as well as applicable federal and state rules and regulations, including:
 - 34 CFR Part 361
 - 34 CFR § 361.57
 - 34 CFR § 361.5(c)(24)
4. At least five years of current or prior experience in the active practice of law, preferably with a strong emphasis in administrative law or representation of government agencies;
5. Have an understanding of the NMDVR's and NMCB's vocational rehabilitation programs and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services;

6. Must demonstrate the ability to analyze complex legal issues and express clear legal reasoning in written decisions. Each Offeror must submit at least one writing sample of not more than 20 pages. The sample must include the following: (a) a discussion and resolution, or proposed resolution, of issues of fact; (b) identification and discussion of the applicable legal standards; and (3) application of the facts to the law.
7. Knowledge of laws applicable to persons with disabilities and/or knowledge of the State's vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services;
8. May not be an employee of a public agency or participate in the State Rehabilitation Commission Councils ("SRC"). *See* 34 CFR §§ 361.57 and 361.5(c)(24);
9. Must not have a personal or professional interest that conflicts with the objectivity of the assignment, *see* 34 CFR §§ 361.57 and 361.5(c)(24); and
10. Must be willing to travel, including overnight travel, to conduct hearings; and
11. Must be capable of devoting the time required for the performance of the duties described in this RFA and must have access to the necessary equipment and staff support to perform these duties, including: (a) telephone, (2) computer and email, (3) access to legal research materials.

V. EVALUATION AND SELECTION

A. THE SELECTION PROCESS

1. The purpose of this process is to allow the NMDVR and NMCB flexibility in securing services that are most advantageous to them.
2. Applications from Offerors who do not meet the stated minimum requirements will not be considered.
3. Applications from Offerors who meet the stated minimum requirements but who do not respond to RFA requirements will not be considered. The NMDVR and NMCB may waive individual instances of noncompliance, provided that it treats all Offerors who are similarly situated the same with respect to any point of noncompliance.

B. EVALUATION FACTORS

1. Responsive applications that meet the stated minimum requirements will be subject to an internal evaluation by the NMDVR and NMCB. Applications will be evaluated based on the NMDVR's and NMCB's discretionary assessment of the following factors, weighted as follows:

35 Points Previous Experience: Experience adjudicating contested cases as a judge, hearing officer, special master or arbitrator or as an attorney or advocate presenting contested matters to tribunals of original jurisdiction

- Number of cases
- Type(s) of cases
- In what capacity

30 Points Quality of Writing Samples

- Clarity of organization and expression
- Coverage of required elements
- Clarity and comprehensiveness of analysis
- Persuasive use of legal authority
- Clarity and sufficiency of reasoning in support of legal conclusions
- Correct grammar, spelling, and punctuation
- Adequate discussion of facts, evidence, and legal issues

25 Points Legal Experience and Background

- Scope and extent of knowledge/experience in vocational rehabilitation law, disability law and/or federal civil rights law
- Scope and extent of administrative/agency law experience
- Years in active law practice

10 Points Recommendations and other relevant experience/knowledge:

- Résumé
- Three letters of recommendation

2. At the NMDVR's and NMCB's discretion, discussions may be conducted with Offerors who submit an application. Applications may also be accepted without such discussions. Discussions may be held: (a) to promote better understanding of the NMDVR's and NMCB's requirements and the Offeror's application in response to the RFA, and (b) to facilitate a contract award that benefits the NMDVR and NMCB while also considering the RFA evaluation factors. Offerors will be accorded fair and equal treatment with respect to any discussion or revision. The application content will not be disclosed or be made available to competing Offerors during the negotiation process.

3. Each Offeror must submit the names, addresses, and telephone numbers of the primary parties, or their representatives, in the three most recent contested cases in which the Offeror has served as an adjudicator or advocate. An Offeror may provide the same information for any older cases which the Offeror considers more illustrative of his/her abilities or more relevant to the RFA subject matter.
4. Each Offeror must submit a signed “Acceptance of Conditions of RFA and Authorization for the Division of Vocational Rehabilitation and New Mexico Commission for the Blind to Obtain Confidential References” in Appendix B. The NMDVR and NMCB may contact any identified parties and/or their representatives and solicit their confidential views regarding the candidate’s qualifications to serve as a hearing officer. Such information will focus on the areas covered in the New Mexico Supreme Court’s Judicial Performance Evaluation System. Comments received will be given such weight as the NMDVR and NMCB believes they merit, giving due consideration to the background and potential bias of each source.
5. Each candidate selected for a contract award must attend and successfully complete a future training session, the date(s) for which have not yet been determined. The NMDVR or NMCB, as appropriate, will be responsible for any costs associated with such training.
6. Final selection for contract awards will be based on the NMDVR’s and NMCB’s discretionary assessment of the qualifications and characteristics of each candidate.

C. QUESTIONS ABOUT THE REQUEST FOR APPLICATION

There will be no pre-application conference. The Division of Vocational Rehabilitation has designated Joseph “Joby” Padilla as the contact person for this Request for Applications. Prospective Offerors with questions should contact:

Joseph “Joby” Padilla
Contracts and Purchasing Manager
New Mexico Division of Vocational Rehabilitation
2935 Rodeo Park Drive East
Santa Fe, NM, 87505
Phone: (505) 470-5681
Fax: (505) 954-8562
Email: joseph.padilla@state.nm.us

D. APPLICATION DATE

The application must be submitted electronically to the email address indicated above no later than 3:00 p.m. on **Wednesday, March 17, 2021**; facsimile copies will not be accepted. Requests for an extension of this date will not be granted. Additional copies of this Request for Application can be obtained by contacting Mr. Padilla at (505) 470-5681.

VI. APPENDICES

APPENDIX A ACKNOWLEDGEMENT OF RECEIPT FORM

OFFEROR'S NAME: _____

PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

Vocational Rehabilitation Impartial Hearing Officers

In acknowledgement of receipt of this Request for Applications, the undersigned agrees that he/she has received a complete copy, beginning with the title page, "Request for Applications" and ending with Appendix C, Contract.

This acknowledgement of receipt form must be signed and returned to Joseph "Joby" Padilla, Contract Manager, via email no later than 3:00 p.m. on Wednesday, March 17, 2021. Only potential Offerors who elect to return this completed form with the required appendices will be considered as Offerors for the position of impartial hearing officer for the time period in the RFA.

APPENDIX B
ACCEPTANCE OF CONDITIONS OF THE REQUEST FOR APPLICATIONS (RFA)
AND AUTHORITY FOR THE NEW MEXICO DIVISION OF VOCATIONAL
REHABILITATION AND THE NEW MEXICO COMMISSION FOR THE BLIND TO
OBTAIN CONFIDENTIAL REFERENCES REGARDING CANDIDATE

I hereby certify that I have read and understand the New Mexico Division of Vocational Rehabilitation's and the New Mexico Commission for the Blind's (collectively "the Agency") Request for Applications (RFA) for Impartial Hearing Officers, that I accept the terms and conditions therein, and that I am submitting this acceptance and authorization in fulfillment of the RFA requirements.

I understand that the initial selection of the Offerors for potential contract awards will be based on the written application, and that if I become a candidate, the Agency may contact some or all of the persons I have identified in my proposal as references. I understand that the Agency will request the person(s) it contacts to provide their candid opinions regarding my qualifications to serve as a vocational rehabilitation hearing officer.

I understand that the Agency will send a copy of this acceptance and authorization to each individual or entity from which it is seeking such information. I hereby authorize the party receiving a copy of this signed form (including a photocopy or facsimile copy) to provide and release complete information as may be requested and I waive any claim of confidentiality I might have with regard to such information. Any person or entity providing information in accordance with this acceptance and authorization is released from any and all claims of liability for his or her good-faith expressions of opinion regarding my qualifications. To encourage candor and foreclose any appearance of future retaliation against persons providing such information, I waive any claim of access to or knowledge of the information so provided.

I understand that the Agency will evaluate all information so received in light of the background and the potential bias of each respondent. I further understand that the information obtained pursuant to this authorization is for the exclusive use of the Agency's consultants in making contracting decisions and will not be disclosed to any other person or entity without my written authorization unless such disclosure is necessary to comply with legal mandates.

Offeror's Signature (Hearing Officer)

Name Typed or Printed

Date

**APPENDIX C
SAMPLE CONTRACT¹**

STATE OF NEW MEXICO

**DIVISION OF VOCATIONAL REHABILITATION
PROFESSIONAL SERVICES CONTRACT # _____**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Division of Vocational Rehabilitation**, hereinafter referred to as the “Agency,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

- A. Be a licensed attorney in good standing;
- B. Have two years of experience serving as a hearing officer (preferred) or at least four years of experience in the area of administrative law;
- C. Have a thorough understanding of the requirements of a hearing officer, as enumerated in the RA as well as applicable federal and state rules and regulations, including:
 - 34 CFR Part 361
 - 34 CFR § 361.57
 - 34 CFR § 361.5(c)(24)
 - 6.101.2 NMAC
- D. Have an understanding of the NMDVR’s and NMCB’s vocational rehabilitation programs and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services;
- E. Conduct hearings in a manner consistent with the RA as amended, federal rules and regulations as established in 34 CFR Part 361, the Agency’s Code of Conduct Policy, as well as any policies or procedures published by the Agency;

¹ NMDVR and NMCB will enter into separate agreements with selected contractors. Appendix C is a sample contract that NMDVR will use to procure hearing officer services. The New Mexico Commission for the Blind will enter into a small purchase agreement with successful Offerors to procure hearing officer services on an as-needed basis. This is in accordance with past prior experience.

- F. Conduct a pre-hearing conference on a date reached by mutual agreement between the parties;
- G. Conduct a hearing within 60 days of an applicant's or recipient's request for review of an Agency determination that affects the provision of vocational rehabilitation services, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;
- H. Allow the parties the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;
- I. Administer oaths and affirmations to the witnesses;
- J. Regulate the course and conduct of the hearing;
- K. Assure that all properly raised and relevant issues are considered;
- L. Rule on the introduction of testimony and other evidence (the technical rules of evidence do not apply to these types of proceedings);
- M. Assure that the proceedings are properly recorded;
- N. Maintain a complete and accurate record of the hearing, including all filed pleadings, exhibits, and admitted evidence;
- O. Consider and rule upon all procedural and other motions appropriate to adjudicative proceedings;
- P. Review the evidence and testimony;
- Q. Within 30 days of completion of the hearing, issue a written decision containing findings of fact and grounds for the decision; the decision shall be made in accordance with the State Plan, the RA, federal vocational rehabilitation regulations, and State regulations and policies;
- R. Within 30 days of completion of the hearing; provide the Agency with a complete record of the hearing;
- S. Cooperate with the Agency and the parties in any subsequent civil action brought to request review of the hearing officer's decision;
- T. Participate in all Agency-mandated trainings;
- U. Send travel reimbursement and service bills to the Agency (Administrative Services Unit) within ten (10) calendar days of the completion of the hearing; and

- V. Accept all assignments as assigned by the Agency unless there is a conflict of interest or extenuating circumstances.

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \$150.00 per hour for hearing-related services and training, with a reduced rate of \$50.00 an hour for travel time and including travel and training expenses, such compensation not to exceed sixty thousand dollars (\$60,000.00) including gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (\$60,000). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

(—OR—)

(CHOICE – MULTI-YEAR)

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of _____ dollars (\$_____) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such

date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **(DATE)** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION

IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. **Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately 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. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

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 State of New Mexico. 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 State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement 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.

11. Product of Service -- Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

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

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

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

by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

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

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

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

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or

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

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the

performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor 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, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

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

22. Debarment and Suspension.

The Agency is prohibited from contracting with entities that have been listed on the government wide exclusions in the System for Award Management (SAM) pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp. p. 189) and 12689 (3 CFR part 1989 Comp., p. 235). Contractor affirms that it is not listed on the System for Award Management. Contractor further agrees to immediately notify the Commission should it be listed on the System for Award Management at any time during the term of this Agreement. The Commission shall also monitor the System for Award Management, and this Agreement shall be terminated immediately on written notice should Contractor be listed on the System for Award Management.

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other

provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:
[insert name, address and email].

To the Contractor:
[insert name, address and email].

26. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

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

By: _____
Agency

Date: _____

By: _____
Agency's Legal Counsel – Certifying legal sufficiency

Date: _____

By: _____
Agency's Chief Financial Officer

Date: _____

By: _____
Contractor

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 Number: 00-000000-00-0

By: _____ Date: _____
Taxation and Revenue Department

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

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

APPENDIX D

STEVENS AMENDMENT NOTICES

COMMISSION FOR THE BLIND:

Public Law 101-166 Notice: The Commission for the Blind receives federal funds from the U.S. Department of Education and from the Health and Human Services Department. For Federal Fiscal Year 2021, the Commission will receive approximately \$5,050,503 for Vocational Rehabilitation with a \$1,366,909 state match; \$55,500 for Supported Employment with a \$3,083 state match; \$225,000 for Older Blind with a \$25,000 state match; and \$59,800 for Independent Living with a \$6,644 State match.

DIVISION OF VOCATIONAL REHABILITATION:

Public Law 101-166 Notice: The New Mexico Division of Vocational Rehabilitation receives federal funds from the U.S. Department of Education and from the Health and Human Services Department. For Federal Fiscal Year 2021, the Division will receive approximately \$21,132,600 for Vocational Rehabilitation Services with a \$5,731,600 state match and \$892,700 for Independent Living Services with a \$676,000 state match.