

STATE OF NEW MEXICO
DIVISION OF VOCATIONAL REHABILITATION



REQUEST FOR APPLICATIONS
VOCATIONAL REHABILITATION MEDIATORS

RFA No. 2024-24761

Issuance Date: May 17, 2024

Due Date: June 11, 2024

ELECTRONIC-ONLY APPLICATION SUBMISSION

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***RAR Request for Application Requirement**

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR APPLICATIONS

The New Mexico Public Education Department, Division of Vocational Rehabilitation (NMDVR) (hereinafter, “the Agency”) requests applications from qualified mediators to assist with resolving disputes through the mediation process. Federal regulations and the New Mexico Administrative Code (“NMAC”) require that the Agency offer mediation to resolve disputes between the Agency and applicants/recipients of vocational rehabilitation services under the Federal Rehabilitation Act of 1973 (“RA”), 29 U.S.C. 701 et seq., as amended by the Workforce Innovation and Opportunity Act of 2014 (“WIOA”).

This RFA is being issued pursuant to NMSA Exemption 13-1-98 AA: purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973.

B. BACKGROUND INFORMATION

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

The Vocational Rehabilitation program receives 78.7% of its funding through a grant from the U.S. Department of Education. For federal fiscal year 2024, the total awarded is \$24,698,300. The remaining 21.3% is funded by state appropriations and transfers from the Commission for the Blind and Commission for the Deaf and Hard of Hearing.

The RA, and its implementing regulations, requires the Agency to offer mediation, at the Agency’s expense, as an option for resolving disagreements between the Agency 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. A “qualified and impartial mediator” for purposes of mediating disputes under the RA, is defined in 34 CFR § 361.5(c)(43) as an individual who:

- (A) is not an employee of the Agency;
- (B) is not a member of the State Rehabilitation Council;
- (C) has not been previously involved in the vocational rehabilitation of the applicant or recipient of services;
- (D) is knowledgeable about the vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services;
- (E) has been trained in effective mediation techniques consistent with any State-

approved or recognized certification, licensing, registration, or other requirement; and

(F) has no personal, professional, or financial interest that could affect the individual's objectivity during the mediation proceedings.

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

The Agency may award this RFA to multiple successful Offerors who will be assigned to mediations on an as-needed basis at a fixed hourly rate to be established by the Agency. The rate will be \$110.00 per hour for mediation services with a reduced rate of \$55.00 an hour for travel time, including travel expenses, plus applicable gross receipts taxes. Assignments of mediators to individual cases will be made in accordance with 34 CFR §361.57.

C. SCOPE OF WORK

1. The Mediator shall:

- A. Be trained and certified to mediate in the State of New Mexico;
- B. Have a thorough understanding of the mediation requirements listed 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)(43)
 - 6.101.2 NMAC
- C. Have an understanding of the Agency’s vocational rehabilitation program and the applicable federal and state laws, regulations, and policies governing the provision of vocational rehabilitation services;
- D. Act as an independent third party to assist parties in settling differences prior to pursuing formal administrative or other legal remedies. Upon being assigned as a mediator by the Agency, the mediator will mediate in a professional manner;
- E. Conduct the mediation 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;

- F. Participate in all Agency-mandated mediation trainings as well as any other trainings that the Agency may require;
- G. Upon assignment, promptly contact the necessary parties to schedule a mediation. The mediation shall be held in a location and manner that is convenient to the parties to the dispute;
- H. Assist the parties in drafting a written mediation agreement;
- I. Send travel and service reimbursement to the designated Agency Contractor Monitor (Rehabilitation Services Unit) within ten (10) calendar days of the completion of the mediation;
- J. Accept all assignments as assigned by the Agency unless there is a conflict of interest or extenuating circumstances; and
- K. Maintain the confidentiality of mediation discussions.

D. CONTRACT PERIOD

To ensure that qualified impartial mediators are available, the Agency proposes to award contracts to Offerors from all geographic locations in New Mexico. The Agency proposes to award each successful Offeror a four-year term contract to provide services as needed at a fixed hourly rate of **\$110.00**, with a reduced rate of \$55.00 an hour for travel time including travel expenses, plus 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 Agency or its designee will compensate the mediator for attending any Agency mandated training in accordance with the Pier Diem and Mileage Act, NMSA 1978, Sections 10-8-1 through 10-1-8.

E. PROCUREMENT MANAGER

DVR has assigned a Procurement Manager who is responsible for the conduct of this RFA whose name, telephone number and Email address are listed below:

Michelle Montoya
Procurement Manager
New Mexico Division of Vocational
Rehabilitation
Michelle.montoya@dvr.nm.gov

Submissions of all proposals must be accomplished via Michelle.montoya@dvr.nm.gov

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

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).

"Close of Business" means 5:00 p.m. Mountain Standard or Mountain 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.

"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 the Agency management to perform the evaluation of Offeror applications.

"Exemption" means these services are exempt from the procurement code under 13-1-98 AA, as stated, "purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973".

"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 Agency 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 Procurement Manager and DVR will make every effort to adhere to the following schedule. These dates are subject to change at the discretion of DVR. Dates indicated in Events 3 through 6 are estimates only and may be subject to change without necessitating an amendment to the RFP.

<u>Action</u>	<u>Responsibility</u>	<u>Target Date</u>
1. Issuance of RFA	Agency	May 17, 2024
2. Acknowledgement of Receipt, Appendix A	Offeror	May 21, 2024
3. Written Questions	Offeror	May 28, 2024
4. Submission of Application	Offeror	June 11, 2024
5. Application Evaluation	Evaluation Committee	June 12, 2024
6. Selection of Finalists	Evaluation Committee	June 18, 2024
7. Contract Negotiations	Optional	June 19, 2024
8. Contract Awards	Agency	July 1, 2024

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 Division of Vocational Rehabilitation.

2. Acknowledgement of Receipt Form

Potential Applicants may Email the Acknowledgement of Receipt Form (APPENDIX A), to the Procurement Manager at michelle.montoya@dvr.nm.gov to have their organization placed on the procurement Distribution List. The form must be returned to the Procurement

Manager by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFA. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Applicants from submitting a response to this RFA. However, by not returning the Acknowledgement of Receipt Form, the potential Applicant's representative shall not be included on the distribution list.

3. Written Questions

There will be no pre-application conference. Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFA until 3:00 pm MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed only to the Procurement Manager. Written responses to the written questions will be provided via Email, to all potential Applicants who timely submitted an Acknowledgement of Receipt Form (APPENDIX A).

4. Submission of Applications

At this time, only **electronic** Application submission is allowed. **Do not** submit hard copies until further notice.

ALL OFFEROR APPLICATIONS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **3:00 PM** MST/MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **APPLICATIONS RECEIVED AFTER THIS DEADLINE WILL NOT BE ACCEPTED.** The date and time of receipt will be recorded on each Application.

Applications must be submitted electronically through michelle.montoya@DVR.nm.gov Applications submitted by facsimile, or other electronic means other than through the Email, **will not be accepted.**

The contents of Applications 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 RFA. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

5. Application Evaluation

An Evaluation Committee will perform the evaluation of Applications. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of applications 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, Applications may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

6. 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.

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

The Agency, at its discretion, will enter into contracts with Offerors selected in response to this RFA and with whom mutually agreeable terms can be reached.

8. Contract Awards

After review of the Evaluation Committee Report, the recommendations of Agency management and the signed contracts, the Agency will award the contracts as per the Section II. A; however, this date is subject to change at the discretion of the Executive Director of the Division of Vocational Rehabilitation.

The contract shall be awarded to the Offeror or Offerors whose application is most advantageous to the Agency, 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 (1) application.

B. NUMBER OF COPIES

Electronic submissions only. A submission that is not both: (1) fully complete; and (2) received by DVR after the deadline, will be deemed late and not accepted. Further, a submission that is not fully complete and received by DVR after the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late and not accepted. In accordance with statute and rule, **NO LATE OFFER CAN BE ACCEPTED.**

C. APPLICATION FORMAT

All applications must be typewritten on standard 8 1/2 x 11 paper and placed within a binder with tabs delineating each section.

1. Applications submitted must not exceed 15 pages, **excluding** the cover page,

acceptance/authorization form (Appendix C 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 - Complete Appendices A through C. 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" and in the attached regulations on mediation and administrative appeals.
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. All discussion of proposed costs, rates, or expenses must occur on the cost response form.

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

IV. QUALIFICATIONS

A. MANDATORY QUALIFICATIONS

The following are necessary qualifications and requirements for contract mediators:

1. Two (2) or more years of experience in mediation and dispute resolution;
2. May not be an employee of the Agency or participate in the

State Rehabilitation Commission (“SRC”). *See* 34 CFR §§ 361.57 and 361.5(c)(43);

3. 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)(43);
4. Total impartiality in each mediation performed. *See* 34 CFR § 361 (c)(43);
5. Has received training (40 hours or more) in effective mediation strategies; and
6. Agree to keep a signed agreement to mediate that will remain on file with the Agency.

B. PREFERRED QUALIFICATIONS

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

V. EVALUATION AND SELECTION

A. CRITERIA FOR THE SELECTION PROCESS

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

- 10 Points Mediation training and approach:
 - Basic training (40 hours minimum)
 - Advanced training

- 10 Points 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.

- 40 Points Mediation experience and approach:
 - Approach and philosophy statement
 - Disputes concerning individuals with disabilities
 - Disputes involving the provision of vocational rehabilitation services
 - Experience in other fields involving conflict, interpersonal communications and/or negotiations
 - Other mediation experience

- 20 Points Recommendations and other relevant experience/knowledge:
 - Resume
 - Three letters of recommendation

- 20 Points Logistical and cost factors:
 - Bilingual ability (Spanish, Native American or other language)
 - Availability of mediator
 - Mediator availability to travel

VI. APPENDICIES

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

**Mediation Services for DVR
RFA 2024-24761**

This Acknowledgement of Receipt Form should be signed and submitted no later than 3:00 pm MST/MDT on **May 21, 2024, to the Procurement Manager**. Only potential Applicants who elect to return this form will receive copies of any RFA amendments and the response to written questions, if any are issued.

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

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

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

EMAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Submit Acknowledgement of Receipt Form to:

To: Michelle Montoya, Procurement Manager

Email: Michelle.montoya@dvr.nm.gov

Subject Line: RFA # 2024-24761

APPENDIX B-1
Mediator Training and Approach

REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

Proof of basic training in mediation, 40 hours or more. List the name and dates or year of training, name of the training provider, number of hours and a brief description of the training. The candidate must briefly describe his/her approach to the practice of mediation and/or the use of mediation to resolve disputes. (10 Points)

APPENDIX B-2
Knowledge of Relevant Laws:

REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

Description of knowledge of the federal Rehabilitation Act of 1973, implementing federal regulations, and New Mexico statutes and administrative rules pertaining to vocational rehabilitation. The candidate must include: the dates, places, nature, and extent of any relevant studies, work or other experience; and names and phone numbers of persons who can verify the candidate's experience. (Note – The minimum requirement here is an accurate *description* of the extent of the candidate's knowledge of the relevant law). (10 Points)

APPENDIX B-3
Experience and Approach
REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

- Experience as a mediator (respond to the following questions):
 - a. How long have you been mediating?
 - b. Approximately how many cases have you mediated?
 - c. How many cases have you mediated that involved vocational rehabilitation issues or issues pertaining to individuals with disabilities?
 - d. How many cases have you mediated that involved federal or state civil rights complaints?
- Specific experience in working with disputes concerning individuals with disabilities (briefly describe the nature of your experience and the location).
- Other experience working in some aspect of disability law (briefly describe the role you played, the length of your experience, and the relationship of this experience to your understanding of the vocational rehabilitation program).
- Experience in other professional fields involving conflict, interpersonal communications and/or negotiation (briefly describe the role you played, the length of your experience, and the relationship of this experience to your understanding of these conflicts),
- Describe your approach to the practice of mediation and/or the use of mediation to resolve disputes, including disputes concerning individuals with disabilities. (40 Points)

APPENDIX B-4
Recommendations and Other Experience
REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

The Offeror must provide:

- a current copy of his/her resume summarizing his/her qualifications and experience, disclosing any past or current affiliations that may present the appearance of a conflict of interest and describing his/her ability to function impartially as a mediator in light of those affiliations. If the Offeror is selected or proposed to mediate a dispute, this statement will be made available to the parties in the mediation and, if requested, to the members of the public pursuant to the New Mexico Inspection of Public Records Act; and
- three (3) letters of reference to indicate his/her level of professionalism and to demonstrate his/her ability to implement the activities in the RFA. (20 Points)

APPENDIX B-5
Logistical and Cost Factors:

REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

- A. Offeror's ability to speak, write, and interpret Spanish, a Native American language spoken in New Mexico, or other language).
- B. Availability as a mediator outside the Albuquerque – Santa Fe area (for a statewide pool); and
- C. Proposed rate – Proposals for rates of more than \$110.00 an hour for mediation time, and \$55.00 per hour for travel time will be rejected as non-responsive.

APPENDIX B-6
Logistical and cost factors (continued)

REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

The Applicant must be able to devote the time necessary to the performance of the duties listed in this RFA and must have access to the necessary support and equipment to perform these duties, including: (1) telephone; (2) ability to receive messages and answer telephone calls during normal business hours; and (3) ability to receive and send electronic mail. Each candidate must describe his/her availability for assignments with specific reference to the nature and extent of his/her ongoing work commitments. Applicants whose ongoing work commitments would not allow them to serve as mediators during normal business hours must explain what arrangements they would make to ensure their availability on short notice and for the amount of time necessary to mediate assigned cases; and (4) the Applicant must confirm that he/she will attend the training session(s) for mediators required by the Agency. (20 points total)

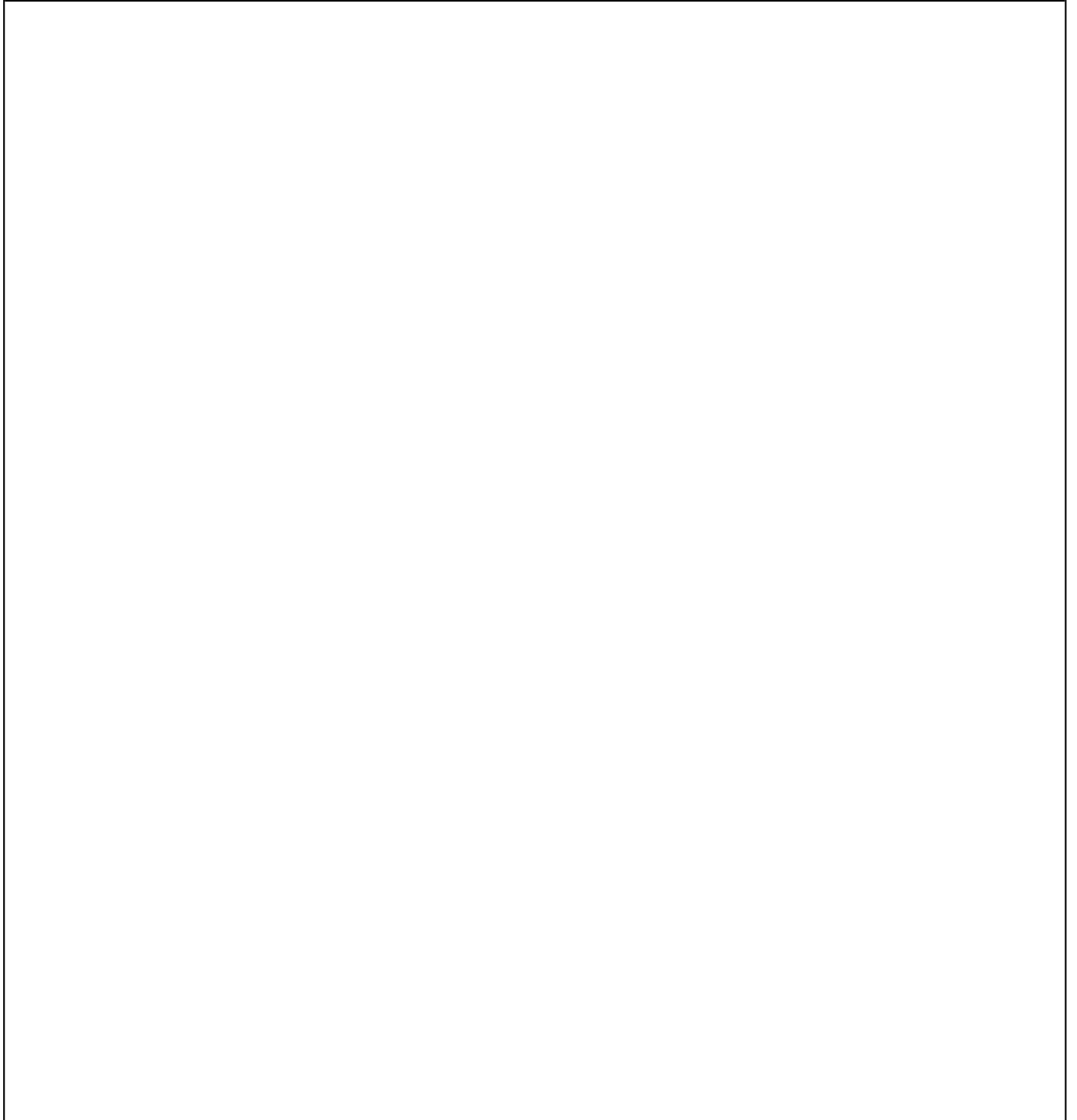
APPENDIX B-7
Statement of Qualifications
REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators

A public or private agency or organization, which desires to submit an application must submit a complete statement of qualifications for each person whom it proposes to provide services as a mediator. Each proposed mediator will be evaluated on an individual basis and the agency or organization must agree, if awarded a contract, to use only mediators who have been individually approved by the Agency. (20 Points)

APPENDIX B-8
Statement of Qualifications, Continuation Sheet
REQUEST FOR APPLICATION REQUIREMENTS

Vocational Rehabilitation Mediators



APPENDIX B-9
Statement of Qualifications, Continuation Sheet
REQUEST FOR APPLICATION REQUIREMENTS
Vocational Rehabilitation Mediators

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

I hereby certify that I have read and understand the New Mexico Division of Vocational Rehabilitation's (NMDVR's), Rehabilitation Services Unit (RSU) ("the Agency") Request for Applications (RFA) for vocational rehabilitation mediators, 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 applications 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 persons it contacts to provide their candid opinions regarding my qualifications to serve as a vocational rehabilitation mediator.

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 (Mediator)

Name Typed or Printed

Date

APPENDIX D
Sample Contract

STATE OF NEW MEXICO
DIVISION OF VOCATIONAL REHABILITATION

PROFESSIONAL SERVICES CONTRACT #: **XX**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Division of Vocational Rehabilitation, hereinafter referred to as the "NMDVR"** 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 NMDVR.

This Agreement for professional services is **exempt** from the provision of the procurement code in accordance with the 1978 **NMSA Section 13-1-98-AA** "purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973."

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

<<<INSERT HERE>>>

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily Performed in accordance to the deliverables defined in the Scope of Work. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed **\$XX (\$xx)**. 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. 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 APPROVAL

BY THE NMDVR. This Agreement shall terminate on (DATE) unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations).

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 and/or the federal government for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and/or the federal government, 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 Agency should it be listed on the System for Award Management at any time during the term of this Agreement. The Agency 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. Clean Air Act and the Federal Water Pollution Control Act.

A. If this Agreement is for services in the amount of \$150,000 or more, Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

B. Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the [funding federal entity], and the appropriate Environmental Protection Agency Regional Office.

C. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Agency.

24. Prohibition of Certain Telecommunications Equipment and Services.

The Contractor certifies and warrants that no part of the Agreement uses covered telecommunications equipment or services as a substantial or essential component of the Agreement, or as critical technology as part of the Contractor's business. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

25. Whistleblower Protection

No employee of the Contractor may be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a federal or state agency information that the employee reasonably believes is evidence of mismanagement of a federal contract or grant, a waste of state or federal funds, an abuse of authority relating to a federal contract or grant, a danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract or grant.

26. Certification Regarding Lobbying

A. If this Agreement is for services in the amount of \$100,000 or more, by executing this Agreement, Contractor certifies to the best of its knowledge and belief that:

(1) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and

(2) If any funds other than federal appropriated funds (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this

solicitation, the Contractor shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Agency at the address listed in paragraph 30 (Notices).

B. This certification is a material representation of fact upon which reliance is placed when this Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. 1352. Any person who makes an expenditure prohibited by this paragraph shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

27. Privacy Act of 1974, 5 U.S.C. 552a

If Contractor has access to records protected under the Privacy Act of 1974, 5 U.S.C. 552a in the performance of this Agreement, Contractor shall comply with the Privacy Act and implementing regulations (20 CFR Part 401). Contractor acknowledges that the willful disclosure of records subject to the protections of the Privacy Act is a misdemeanor crime which may be punishable by a fine not to exceed \$5,000.

28. 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.

29. 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.

30. 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:
State of New Mexico
Division of Vocational Rehabilitation
Attn: Administrative Services Unit
2935 Rodeo Park Drive East
Santa Fe, NM 87505

To the Contractor:

31. 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 NMDVR Director.

By: _____ Date: _____
NMDVR Director

By: _____ Date: _____
DVR Legal Counsel – Certifying legal sufficiency

By: _____ Date: _____
DVR Chief Financial Officer

By: _____ Date: _____
Contractor

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

APPENDIX E

New Mexico Rule 6.101.2 NMAC

<https://www.srca.nm.gov/parts/title06/06.101.0002.pdf>

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 101 VOCATIONAL REHABILITATION - PROCEDURAL SAFEGUARDS
PART 2 FAIR HEARINGS AND ALTERNATIVE DISPUTE RESOLUTIONS RELATED TO
VOCATIONAL REHABILITATION

6.101.2.1 ISSUING AGENCY: Public Education Department.
[6.101.2.1 NMAC - Rp, 6.101.2.1 NMAC, 9/29/2020]

6.101.2.2 SCOPE: The provisions of this regulation apply to persons applying for or receiving vocational rehabilitation and aggrieved by any action or inaction of DVR or the director of DVR.
[6.101.2.2 NMAC - Rp, 6.101.2.2 NMAC, 9/29/2020]

6.101.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-14-8 and 22-14-12 NMSA 1978.
[6.101.2.3 NMAC - Rp, 6.101.2.3 NMAC, 9/29/2020]

6.101.2.4 DURATION: Permanent.
[6.101.2.4 NMAC - Rp, 6.101.2.4 NMAC, 9/29/2020]

6.101.2.5 EFFECTIVE DATE: September 29, 2020, unless a later date is cited at the end of a section.
[6.101.2.5 NMAC - Rp, 6.101.2.5 NMAC, 9/29/2020]

6.101.2.6 OBJECTIVE: To establish a means by which an individual who has applied for or is a recipient of vocational rehabilitation services can appeal or request mediation of: a determination of a counselor concerning the furnishing or denial of services; or any action or inaction of the division of vocational rehabilitation or the director of vocational rehabilitation. A request for a fair hearing or mediation is to be construed liberally to allow a client to seek redress for DVR decisions that affect their case.
[6.101.2.6 NMAC - Rp, 6.101.2.6 NMAC, 9/29/2020]

6.101.2.7 DEFINITIONS:

A. "Client assistance program" means the independent private or public agency designated to:

- (1)** advise and inform applicants for and recipients of vocational rehabilitation services of services and benefits available under the federal Rehabilitation Act of 1973;
- (2)** assist and advocate for applicants for and recipients of vocational rehabilitation services in their relationships with projects, programs, and community rehabilitation programs providing services under the Rehabilitation Act of 1973; and
- (3)** inform individuals with disabilities in New Mexico, especially individuals with disabilities who traditionally have been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the federal Rehabilitation Act of 1973 and Title I of the federal Americans with Disabilities Act of 1990.

B. "Division of vocational rehabilitation" or "DVR" means the division of vocational rehabilitation.

C. "Fair hearing" means an agency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard.

D. "Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

[6.101.2.7 NMAC - Rp, 6.101.2.7 NMAC, 9/29/2020]

6.101.2.8 CLIENT ASSISTANCE PROGRAM: DVR shall inform applicants for and recipients of vocational rehabilitation services, or their representatives, of the availability and purpose of a designated client assistance program including:

A. information on how to contact the client assistance program and obtain their assistance; and

B. the client assistance program's obligation to provide assistance in informing and advising all applicants for and recipients of vocational rehabilitation services of all benefits and services available under vocational rehabilitation programs.

[6.101.2.8 NMAC - Rp, 6.101.2.8 NMAC, 9/29/2020]

6.101.2.9 FAIR HEARING:

A. Requesting a fair hearing. A request for hearing shall be made to the DVR director. A hearing request should indicate the contested decision and the counselor assigned to the case. A hearing request shall be made within 45 days of the disputed decision.

B. Appointment of a hearing officer. A hearing officer shall be appointed on a random basis or by agreement between the client and the DVR director. The selection of a hearing officer shall be made from a pool of qualified hearing officers established jointly by the state rehabilitation advisory council and the DVR director. The hearing officer shall not be an employee of DVR.

C. Time of hearing. The hearing shall be held within 60 days from the date of the request for hearing. The time limit may be extended by the hearing officer upon the request of either party, for good cause shown. The time limit may also be extended upon agreement of both parties.

D. Opportunity to present evidence. At the hearing, the client or client's representative shall be allowed to present evidence, information, and witnesses to the hearing officer, and to examine all witnesses and other sources of evidence and information.

E. Duties of hearing officer. The hearing officer shall:

(1) conduct a pre-hearing conference on a date reached by mutual agreement between the parties;

(2) administer oaths and affirmations to the witnesses;

(3) regulate the course and conduct of the hearing;

(4) assure that all properly raised and relevant issues are considered;

(5) rule on the introduction of testimony and other evidence (the technical rules of evidence do not apply);

(6) assure that the proceedings are properly recorded;

(7) review the evidence and testimony; and

(8) make a decision based upon the facts presented at the hearing, the provisions of the approved state plan, the federal Rehabilitation Act of 1973 and accompanying federal regulations, and consistent state regulations and policies, the manual of operating procedures, and good rehabilitation practice.

F. Decision of hearing officer. The hearing officer shall issue a written decision within 30 days of the completion of the hearing. The decision shall fully set forth the findings of the hearing officer and the grounds for the decision. A decision by a hearing officer shall be final unless a party brings civil action under Subsection I of 6.101.2.9 NMAC.

G. Review by director. The director of DVR may not overturn a hearing officer's decision.

H. Provision of services pending appeal. Pending a final determination of a civil action, DVR shall not suspend, modify, or terminate services being provided under an individualized written rehabilitation program, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with a disability.

I. Civil action. Any party aggrieved by a final decision described in section Subsection F of 6.101.2.9 NMAC may bring a civil action for review of such decision. The action may be brought in any state court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any action brought under this subparagraph, the court shall:

(1) receive the records relating to the hearing and the records relating to the state review, if applicable;

(2) hear additional evidence at the request of the party to the action; and

(3) base the decision of the court on the preponderance of the evidence and shall grant such relief as the court determines to be appropriate.

[6.101.2.9 NMAC - Rp, 6.101.2.9 NMAC, 9/29/2020]

6.101.2.10 ALTERNATIVE DISPUTE RESOLUTIONS:

A. Requesting mediation. A request for a mediation proceeding shall be made to the director of DVR. The request shall indicate the contested decision and the counselor assigned to the case. The request shall be made within 45 days of the disputed decision.

B. Appointing a mediator. A qualified and impartial mediator shall be appointed on a random basis or by agreement between the client and the DVR director. The selection of a mediator shall be made from a pool of qualified mediators established jointly by the state rehabilitation advisory council and the DVR director. The mediator shall not be an employee of DVR.

C. Time of mediation. The mediation shall be held within 60 days from the date of the request for mediation. The time limit may be extended by the mediator upon the request of either party, for good cause shown. The time limit may also be extended upon agreement of both parties.

D. Mediation procedures. Mediations shall be scheduled and conducted in a timely manner, and held in a location and manner that is convenient to the parties to the dispute.

(1) During mediation processes, applicants for and recipients of vocational rehabilitation services may be represented by counsel or another advocate of their selection;

(2) The applicant for or recipient of vocational rehabilitation services, or their representative, shall have opportunity during the mediation to submit evidence or other information in support of their position;

(3) Either party may terminate mediation at any point in the mediation process. If mediation is terminated, either party may pursue resolution through an impartial hearing, pursuant to 6.101.2.9 NMAC;

(4) Discussions that occur during a mediation process shall be kept confidential and may not be used as evidence in any subsequent fair hearing or civil proceeding. Parties to a mediation process may be required to sign a confidentiality pledge prior to the commencement of the process;

(5) An agreement reached by the parties to the dispute in mediation shall be described in a written mediation agreement that is developed by the parties with the assistance of the mediator, and signed by both parties. Copies of the agreement shall be mailed to both parties; and

(6) DVR shall pay the costs of mediation, except that DVR shall not be required to pay for the costs related to the representation of an applicant for or recipient of vocational rehabilitation services.

E. Duties of mediator. The mediator shall:

(1) schedule the mediation session(s);

(2) regulate the course and conduct of the mediation; and

(3) assure that all properly raised and relevant issues are considered.

F. Provision of services pending appeal. Pending resolution through mediation, DVR shall not suspend, modify, or terminate services being provided under an individualized written rehabilitation program, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual with a disability.

[6.101.2.10 NMAC - Rp, 6.101.2.10 NMAC, 9/29/2020]

HISTORY OF 6.101.2 NMAC:

6.101.2 NMAC, Fair Hearings Related to Vocational Rehabilitation , filed 12/31/1998, was repealed and replaced by 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation, effective 9/29/2020.