

STATE OF NEW MEXICO

**ECONOMIC DEVELOPMENT DEPARTMENT
PROFESSIONAL SERVICES CONTRACT # 21 419 P512 00023**

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **ECONOMIC DEVELOPMENT DEPARTMENT**, hereinafter referred to as the “Agency,” and **SCEYE INC.**, 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:

The New Mexico Economic Development Department (NMEDD) will procure the services to be delivered within one year of the awarded contract. The services required will need to include data collection, modeling, testing, technical analysis of broadband from the stratosphere. The awarded contractor will be responsible for providing all necessary equipment, providing necessary installations and repairs, attaining all certifications, licenses, and insurance in order to deliver required deliverables.

The awarded contractor will also provide technical and customer support to the proper State of New Mexico entity including, but not limited to, New Mexico Department Information Technology (DoIT), The New Mexico Environment Department (NMED), The NMEDD and the NMDOT.

The resulting contract will be a single award. If there is any type of failure to secure any deliverable, the company has the right to remedy at their own expense within 6 months.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by the State of New Mexico exclusively, unless express written consent is granted to another party by the New Mexico Economic Department.

A. DETAILED SCOPE OF WORK

- Contractor must include verification that the necessary equipment for collection of data as it relates to Electromagnetic Interference (EMI) assessment, Thermal modeling and Environmental testing has been acquired and will be sufficient to provide the service of data collection from a minimum of 60,000 feet.
- Contractor will include contractor’s timeline and plan for reporting data as it is being collected during the course of the project to the appropriate Agency(s). Reporting must be conducted at the very least monthly. If the contractor feels it is vital to the success of the project, they may conduct more reporting throughout the month as needed and as approved.

- Contractor will include technical support during the period of the contract to the affected State Agency(s) as they evaluate data and progress during the length of the contract.
- Contractor must provide proof that they have the technical ability to perform the data collection and technical operations at a minimum of 60,000 feet for a sustained period of time.

DELIVERABLES

- Contractor will include a final report outlining how each possible use could be deployed, the cost of the deployment of the system for a specific use and for statewide use. The final report shall include short-term one-time costs and long-term recurring costs that each system will have. It shall also offer other alternatives and their benefits, costs and weaknesses.
- In addition, the Contractor will provide a full design of each proposed system to include software, hardware and any specific engineering or design needs of each system.
- Contractor will include a detailed list of all licenses that will be required and the timeline for obtaining such licenses.
- Contractor will include data collection from the stratosphere and from the ground to be evaluated in order to determine the feasibility and viability of providing broadband to 100% of New Mexico. This data should prove the range and operating capacity of the model, the speed and measurement of the service provided, the latency of the technology, whether the system and infrastructure are network ready and that the stratospheric system can successfully connect to user equipment on the ground.
- If the test and data collection should fail, the company will have the right to remedy at their own cost, and provide the data within 6 months.
- All data collection collected on behalf of the State of New Mexico and the final report will be proprietary to the State of New Mexico and not to be used without the express consent of the New Mexico Economic Development Department.
See Exhibit "A"

2. Compensation.

- A. The Agency shall pay to the Contractor in full payment for services satisfactorily

performed at the rate of one million five hundred thousand dollars (\$1,500,000.00) in FY21, and one million seven hundred thousand thousand dollars (\$1,700,000.000) in FY22 such compensation not to exceed (\$3,200,000.00), including gross receipts tax. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed three million two hundred thousand dollars (\$3,200,000.00). 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.

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 **(01/31/2022)** 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

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 reports specifically developed by the Contractor for the State of New Mexico 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 those reports, in whole or in part, by the Contractor under this Agreement shall be 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. 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.

23. 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.

24. 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: Economic Development Department
 Mark Roper
 1100 S. St. Francis Dr.
 Santa Fe, NM 87505
 (505) 562-0327
 Mark.roper@state.nm.us

To the Contractor: Sceye Inc.
 50 George Applebay Way
 Bldg. 200
 Moriarty, NM 87035
 dd@sceye.com

25. 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: 4/13/2021

Contract ID# _____

By: Jesika Ulibarri
Agency's Legal Counsel – Certifying legal sufficiency

Date: 4/9/2021

By: Donelle Holme
Agency's Chief Financial Officer

Date: 04/06/2021

By: [Signature]
Contractor

Date: 31st March 2021

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.

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

ID Number: ~~03-396661-00-2~~
03-396619-00-2

By: AnnMarie Lucero
Taxation and Revenue Department

Date: 4/5/2021

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

By: [Signature]
GSD/SPD Contracts Review Bureau

Date: May 25, 2021

EXHIBIT A – SCOPE OF WORK

I. Deliverables

The following sections describe the required tasks and subtasks to be performed by the Contractor for each Deliverable under the terms of this Agreement. The Contractor must perform each task and/or subtask, but is not limited to performing only the identified task or sub tasks in a given project area. The Parties hereby agree that the Deliverable(s) are the controlling items and that the Contractor’s obligation is to perform and deliver the Deliverable as described in the following sections.

A. **Deliverable #1**

Name	Due Date	Compensation
Antenna hardware and RF Engineering, Flight services, system design, LTE Software development and small parts acquisition	6/30/21	\$1,500,000.00

B. **Deliverable #2**

Name	Due Date	Compensation
Completion of Antenna hardware and RF Engineering, Flight services, system design, LTE software development and small parts acquisition. Submission of final documents	11/30/21	\$1,700,000.00

Total: \$3,200,000.00 USD

Contract No.:
Vendor No.:

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

This Memorandum of Understanding (MOU) between the **New Mexico Department of Transportation** (NMDOT) and the **New Mexico Economic Development Department** (NMEDD), and is effective as of the date of the last party to sign it on the signature page.

WHEREAS, the NMEDD is an executive agency of the State of New Mexico created under the Economic Development Department Act, NMSA 1978, Sections 9-15-1 through 9-15-36, and is authorized by NMSA 1978, Sections 74-1-6(B); and

WHEREAS, the NMDOT is an executive agency of the State of New Mexico created under Chapter 67 NMSA 1978; and

WHEREAS, NMEDD and NMDOT desire to enter into this MOU to accomplish the project as hereinafter described in the most cost-effective and administratively efficient manner by designating NMEDD to undertake and oversee the activities of the project; and

WHEREAS the NMDOT has committed itself to provide an agreed level of funding for the implementation of the project on the terms and conditions set or to be set forth

NOW, THEREFORE, the parties have come to the following understanding:

SECTION 1. PURPOSE OF AGREEMENT.

New Mexico has large areas of the state that are rural and have low to no connectivity.

The State of New Mexico has had limited success with securing federal funds for traditional broadband deployment;

The NMDOT has highway billboards throughout the State of New Mexico that require broadband connection capabilities and requires broadband services for key rapid response for safety and transportation needs;

The State of New Mexico has long been a spot of innovation and is looking to provide new jobs to the economy in order to diversify and grow the State of New Mexico economy.

Therefore, the State of New Mexico is seeking alternatives to traditional methods for broadband - thereby allowing the State to be at the forefront of new solutions and technologies for near 100% connectivity.

To that end, the NMEDD will procure the services of a consultant (the "Contractor") with the scope of the services to include data collection from the ground and from the air at altitudes above 60,000 feet, modeling, testing, technical analysis of broadband from the stratosphere, and the provision, installations and repair of all necessary equipment, attaining all certifications, licenses, and insurance in order to deliver required deliverables (the "Project").

SECTION 2. RESPONSIBILITIES OF THE PARTIES. The responsibilities of the Parties are as follows:

1. NMDOT shall:

- a. Assign a project manager who will be in direct contact with NMEDD.
- b. Contribute up to \$3,200,000 to pay for the services provided by the Contractor. The funds will be provided in one lump sum to NMEDD within 30 days of receipt of an invoice. NMDOT shall be obligated to make payment prior to April 15, 2021.
- c. NMDOT shall participate in the negotiation, preparation and approval of the scope of the services to be performed by the Contractor.
- d. Provide needed documentation and review of work produced under the Contract.
- e. Collaborate with NMEDD and meet as needed.

2. NMEDD Shall:

- a. Assign a project manager who will be in direct contact with the NMDOT.
- b. Procure the services of a Contractor through the issuance of a Request for Proposal (RFP). Terms defined in the RFP shall be given the same meaning if used in this MOU.
- c. Permit the NMDOT to participate in the negotiation, preparation and approval of the scope of the services to be performed by the Contractor.
- d. Permit the NMDOT to review and approve the terms of the Contract awarded to the Contractor.
- e. Collaborate with NMDOT and meet as needed.

SECTION 3. TERM OF AGREEMENT. The term of this MOU shall become effective upon signature of Parties and shall remain in effect for the duration of the Project unless terminated by mutual agreement of the Parties.

SECTION 4. SCOPE OF AGREEMENT. This MOU is not legally binding and neither expands nor limits the powers, duties, and authorities of either Party under applicable

law but is evidence of the voluntary agreement between the NMDOT and the NMEDD to work together on the Project. The Parties acknowledge that they may enter into further agreements to fully implement duties, obligations, and undertakings outlined herein. This MOU supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire agreement between the Parties. No amendment to this MOU shall be effective except in writing signed by both Parties.

SECTION 5. NO AGENCY RELATIONSHIP. Unless otherwise expressly provided by law, personnel of one Party shall not be considered to be agents or employees of the other Party for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist as a result of this MOU.

SECTION 6. THIRD-PARTY BENEFICIARY CLAUSE. This MOU is not intended by any of the provisions of any part of this MOU to create in the public, or any member thereof, a third-party beneficiary or to authorize anyone not a party to the MOU to maintain a suit for breach of contract, wrongful death, bodily or personal injury to persons, damage to property, or any other claim(s) whatsoever pursuant to the provisions of this MOU.

SECTION 7. JURISDICTION. This MOU shall be subject to the jurisdiction of the laws of the State of New Mexico and the appropriate courts of competent jurisdiction in the State of New Mexico.

SECTION 8. NOTICE. All notices or payments required by this MOU to be given to any party shall be deemed to have been fully delivered, given, made or sent when made in writing and deposited in the United States mail, certified, with postage prepaid thereon, and addressed to the following persons and addresses unless any of the Parties change their respective address by giving written notice of such change to the other:

Notice to the NMDOT:

Notice to NMEDD:

SECTION 9. SEVERABILITY. In the event any portion of this MOU is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this MOU shall remain in full force and effect.

SECTION 10. COUNTERPART COPIES. This MOU is valid if signed in counterpart copies. This MOU may be delivered by facsimile or e-mail and shall be as binding upon such Party as if such Party had delivered a counterpart of this MOU with such party's original signature thereon.

SECTION 11. AUTHORITY. Parties to this MOU hereby represent and warrant that such Party has full power and authority to enter into this MOU and to consummate the transactions that are contemplated hereby and that neither entering into this MOU, nor the performance of that Party's obligations under this MOU, will violate the terms of any contract, agreement, or instrument to which that Party is currently subject.

SECTION 12. NEW MEXICO TORT CLAIMS ACT. Any liability incurred in connection with this MOU is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.* This paragraph is intended only to define the liabilities between the Parties and it is not intended to modify, in any way, the Parties' liabilities as governed by common law or the New Mexico Tort Claims Act. IN WITNESS WHEREOF, the Parties have executed this MOU.

New Mexico Department of Transportation

By: 
Michael Sandoval (Feb 9, 2021 08:17 MST)
Michael Sandoval
Cabinet Secretary or Designee

Date: Feb 9, 2021

Recommended by:

By: _____

Date: _____

By: Jeremy Lovato
Jeremy Lovato, CIO

Date: Feb 9, 2021

Approved as to form and legal sufficiency by the New Mexico Department of Transportation Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

New Mexico Economic Development Department

By: Alicia J. Keyes
Alicia J. Keyes
Cabinet Secretary or Designate

Date: 1/21/2021

Approved as to form and legal sufficiency by the Office of General Counsel for the New Mexico Economic Development Department.

By: Jesika Ulibarri
Jesika Ulibarri
General Counsel

Date: 1/21/2021

By: Jeremy Lovato
Jeremy Lovato, CIO

Date: Feb 9, 2021

Approved as to form and legal sufficiency by the New Mexico Department of Transportation Office of General Counsel

By: [Signature]
Assistant General Counsel

Date: 2/3/2021

New Mexico Economic Development Department

By: [Signature]
Alicia J. Keyes
Cabinet Secretary or Designate

Date: 1/21/2021

Approved as to form and legal sufficiency by the Office of General Counsel for the New Mexico Economic Development Department.

By: [Signature]
Jesika Ulibarri
General Counsel

Date: 1/21/2021

NMEDD MOU.NMEDD Sig

Final Audit Report

2021-02-09

Created:	2021-02-02
By:	Jolene Casados (jolene.casados2@state.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAB2UqAw6KE_yS3FrumJJuG8p_8Zd7FQLi

"NMEDD MOU.NMEDD Sig" History

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Economic Development Department

REQUEST FOR PROPOSALS (RFP)

Broadband Assessment & Data Collection



RFP Release Date: October 11, 2020

Proposal Due Date: October 26, 2020

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of an assessment to include data collection, regarding the viability of providing broadband service detection from the stratosphere throughout the State of New Mexico

B. BACKGROUND INFORMATION

New Mexico has large areas of the state that are rural and have low to no connectivity;

The State of New Mexico has had limited success with securing federal funds for traditional broadband deployment;

The New Mexico Department of Transportation (NMDOT) has highway billboards throughout the State of New Mexico that require broadband connection capabilities; and requires broadband services for key rapid response for safety and transportation needs;

The State of New Mexico has long been a spot of innovation and is looking to provide new jobs to the economy in order to diversify and grow the State of New Mexico Economy.

Therefore, the State of New Mexico is seeking alternatives to traditional methods for broadband - thereby allowing the State to be at the forefront of new solutions and technologies for near 100% connectivity.

This RFP is designed to collect data from the ground and from the air at altitudes above 60,000 feet. The contractor will need to provide not only the vehicle to get to those altitudes, but also provide the technical equipment necessary to conduct the appropriate points of data collection as it relates to broadband

The result of this RFP will be that the State of New Mexico will receive the data to prove that the technology is sufficient, and will receive a complete system design and proof of deployment.

C. SCOPE OF PROCUREMENT

The New Mexico Economic Development Department (NMEDD) will procure the services to be delivered within one year of the awarded contract. The services required will need to include data collection, modeling, testing, technical analysis of broadband from the stratosphere. The awarded contractor will be responsible for providing all necessary equipment, providing necessary installations and repairs, attaining all certifications, licenses, and insurance in order to deliver required deliverables.

The awarded contractor will also provide technical and customer support to the proper State of New Mexico entity including, but not limited to, New Mexico Department Information Technology (DoIT), The New Mexico Environment Department (NMED), The NMEDD and the NMDOT.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by State of New Mexico agencies exclusively, unless express written consent is granted to another party by the New Mexico Economic Development Department.

D. PROCUREMENT MANAGER

New Mexico Economic Development Department has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Mark Roper, Procurement Manager
Telephone: (575) 562-0327
Email: mark.roper@state.nm.us

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

E. PROPOSAL DELIVERY

Submissions of all proposals must be accomplished via email to:

mark.roper@state.nm.us

*Subject Line must read **Broadband Assessment RFP***

F. DEFINITION OF TERMINOLOGY

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

1. “**Agency**” means the New Mexico Economic Development Department
2. “**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.
3. “**Award**” means the final execution of the contract document.
4. “**Broadband**” means a high-capacity transmission technique using a wide range of frequencies, which enables a large number of messages to be communicated simultaneously.
5. “**Business Hours**” means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
6. “**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
7. “**Confidential**” means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7, NMSA 1978. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
8. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
9. “**Contractor**” means any business having a contract with a state agency or local public body.
10. “**Determination**” means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
11. “**Desirable**” – the terms ”may,” ”can,” ”should,” ”preferably,” or ”prefers” identify a desirable or discretionary item or factor.
12. “**Electronic Submission**” means a successful submittal of Offeror’s proposal to the designated point or portal.

13. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
14. **“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
15. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
16. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
17. **“IT”** means Information Technology.
18. **“Mandatory”** – the terms ”must,” ”shall” ”will,” ”is required,” or ”are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
19. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
20. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
21. **“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
22. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.
23. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
24. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
25. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978

and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.

26. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
27. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
28. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
29. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
30. **“State (the State)”** means the State of New Mexico.
31. **“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
32. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.
33. **“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
34. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
35. **“Written”** means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	NMEDD	10/11/20
2. Deadline to submit Questions	Potential Offerors	10/16/20
3. Response to Written Questions	Procurement Manager	10/20/20
4. <i>Submission of Proposal</i>	<i>Potential Offerors</i>	<i>10/26/20</i>
5.* Proposal Evaluation	Evaluation Committee	10/28/20
6.* Selection of Finalists	Evaluation Committee	10/28//20
7.* Oral Presentation(s)	Finalist Offerors	10/30/20
11.* Finalize Contractual Agreements	Agency/Finalist Offerors	11/03/20
12.* Contract Awards	Agency/ Finalist Offerors	11/04/20
13.* Protest Deadline	SPD	11/18/20

*Dates indicated in Events 7 through 13 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the NMEDD as indicated in Section II.A, Sequence of Events

2. Acknowledgement of Receipt

Potential Offerors may, e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the NMEDD buyer, Mark Roper mark.roper@state.nm.us, to have their organization

placed on the procurement Distribution List. The form must be returned to the NMEDD Buyer by 3:00 pm MST/ MDT as 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 RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 PM MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed and emailed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

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

An electronic version of the Questions and Answers will be posted to:
<https://www.gonm.biz/>

5. Submission of Proposal

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

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **3:00 PM** MST/MDT as indicated in Section II.A, Sequence of Events.

Proposals Received After This Deadline Will Not Be Accepted. The date and time of receipt will be recorded on each proposal.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions

with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

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

Finalists will be selected from the cumulative score of the Evaluation Committee: While price will be a consideration of the proposal the main factors will be. Company's experience of providing this type of data collection. Company's timeline of providing the data, technical assistance and final recommendations.

Best and Final Offers

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

Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a location to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. Whether or not Oral Presentations will be held is at the discretion of the Evaluation Committee and NMEDD.

8. Finalize Contractual Agreements

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

9. Contract Awards

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

10. Protest Deadline

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

Jon Clark
jon.clark@state.nm.us

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors/Consent

The use of subcontractors is not allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the

agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

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

8. Disclosure of Proposal Contents

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

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

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

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

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

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

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

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

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

16. Offeror's Terms and Conditions

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

17. Contract Deviations

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

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.20. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. Agency Rights

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

23. Right to Publish

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

24. Ownership of Proposals

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

25. Confidentiality

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

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

26. Electronic mail address required

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

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: www.gonm.biz

28. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

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

30. Letter of Transmittal

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

The Letter of Transmittal MUST:

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

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

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or

other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.

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

32. New Mexico Preferences

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

A. New Mexico Business Preference

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

B. New Mexico Resident Veterans Business Preference

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

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

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

1. ELECTRONIC SUBMISSION ONLY

Proposals in response to this RFP must be submitted via email to:

mark.roper@state.nm.us

the Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below. *EXCEPTION: Single electronic files that exceed 20mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 20mb limit.* Separate the proposals as described below into separate electronic files for submission.

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal **must** be submitted in separate uploads as indicated below in this section, and **must** be prominently identified as “Technical Proposal,” or “Cost Proposal,” on the front page of each upload

- a) **Technical Proposals** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 20mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* The Technical Proposals **SHALL NOT** contain any cost information.
 - i. **Confidential Information**: If Offeror’s proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files** :
 - One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section I.F.38) versions for evaluation purposes; and
 - One (1) **redacted** (def. Section I.F.27) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page of the electronic file;
- b) **Cost Proposals** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a single**

file/document for uploading. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 20mb limit*

The ELECTRONIC proposal submission **must be fully uploaded** in Mark Roper's email system by the submission deadline in Section II.B.6.

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

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Organization of files/envelopes for electronic copy proposals:

1. Proposal Content and Organization

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

Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)**
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror's Additional Terms and Conditions (from Section II.C.16)
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binder 2**)
 1. Organizational Experience
 2. Organizational References
 - 3. Mandatory Specification**
 - 4. Desirable Specification**
 - 5. Financial Stability –(Financial information considered confidential, as defined in Section I.E. and detailed in Section II.C.8, should be placed in the Confidential Information file, per Section II.B.1.a.i or Section II.B.2.a.i, as applicable)**
 - 6. Performance Surety Bond (if applicable)**
 - 7. New Mexico Preferences (if applicable)**
- H. Other Supporting Material (if applicable)**

Cost Proposal:

1. Completed Cost Response Form (APPENDIX D)

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

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

IV. SPECIFICATIONS

A. DETAILED SCOPE OF WORK

- Contractor must include verification that the necessary equipment for collection of data as it relates to Electromagnetic Interference (EMI) assessment, Thermal modeling and Environmental testing has been acquired and will be sufficient to provide the service of data collection from a minimum of 60,000 feet.
- Contractor will include contractor's timeline and plan for reporting data as it is being collected during the course of the project to the appropriate Agency(s). Reporting must be conducted at the very least monthly. If the contractor feels it is vital to the success of the project, they may conduct more reporting throughout the month as needed and as approved.
- Contractor will include technical support during the period of the contract to the affected State Agency(ies) as they evaluate data and progress during the length of the contract.
- Contractor must provide proof that they have the technical ability to perform the data collection and technical operations at a minimum of 60,000 feet
- Contractor must provide proof that they will also be able to build and operate commercial grade, long endurance, stratospheric platforms capable of carrying multiple diverse instrument payloads on extensive geostationary missions
- Broadband payload should use a commercial grade MIMO antenna, support advanced beam forming technologies capable of 3D beamforming in 4G LTE and in 5G, configurable 3GPP compliant baseband software capable of ranges to 100km and readily extensible to over 150km
- Broadband payload should be based on OpenRAN architecture and designed to conform with standard network interfaces and protocols
- Contractor must hold a current FCC license to operate in the stratosphere above 60,000 feet, within New Mexico, at ranges up to 150km and from a high-altitude platform
- Contractor must be able to perform the data collection before 31 Dec 2020

A.1. DELIVERABLES

-
- Contractor will provide access to proposed Broadband, Methane Detection and CO2 Detection payload designs and at least one feasibility study related thereto conducted in partnership with an aeronautical or space agency or other governmental agency. Contractor

will include a report outlining how each possible use could be deployed, the cost of the deployment of the system for a specific use and for statewide use. The final report shall include short-term one-time costs and long-term recurring costs that each system will have. It shall also offer other alternatives and their benefits, costs and weaknesses. Fees billed by the awarded Contractor that were not included in the cost proposal shall not be paid.

- In addition, the Contractor will provide a full design of each proposed system to include software, hardware and any specific engineering or design needs of each system.
- Contractor will include a detailed list of all licenses that will be required and the timeline for obtaining such licenses. Contractor shall furnish licenses required by the Procuring Agency at the time of services.
- Contractor will include data collection from the stratosphere and from the ground to be evaluated in order to determine the feasibility and viability of providing broadband to 100% of New Mexico. This data should prove the potential range and operating capacity of the model, the speed and measurement of the service provided, the latency of the technology, whether the system and infrastructure are network ready and that the stratospheric system can successfully connect directly to standard user equipment on the ground.
- All data collection and the final report will be proprietary to the State of New Mexico and not to be used without the express consent of the New Mexico Economic Development Department.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offeror **must**:

- a) Provide a detailed description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly in detail describe how the Offeror has supplied expertise for similar contracts and **must** include the extent of their experience, expertise and knowledge as a provider of data collection from the stratosphere. All relevant experience to deliver the finished product, that provided to private sector will also be considered;
- b) provide a detailed bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel is identified as officer and management level persons involved in the proposal offer. Offeror **must** include key personnel education, work experience, relevant/applicable certifications/licenses.
- c) Describe **at the least two** project successes or failures of a project(s) conducted at high altitudes in or above the Jetstream.

2. Organizational References

Offeror **must** provide a list of a minimum of two (2) references from similar projects/programs performed or planned for private, state or large local government clients within the **last three (3) years**.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire (“Questionnaire”), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror’s responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror’s score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

C. BUSINESS SPECIFICATIONS

1. Financial Stability

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

2. Performance Surety Bond

Offeror(s) must have the ability to secure a Performance Surety Bond in favor of the Agency to insure the Contractor’s performance upon any subsequent contract award. Each engagement will be different but the option to require a Performance Surety Bond must be

available to the Agencies at time of contract award. **A Statement of Concurrence, as defined in Section I.F.37, must be submitted in the Offeror's proposal**

3. Letter of Transmittal Form

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

4. Campaign Contribution Disclosure Form

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

5. Cost

Offerors must complete the Cost Response Form in APPENDIX D.

Resident Business or Resident Veterans Preference

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

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

Evaluation Factors <i>(Correspond to section IV.B and IV C)</i>	Points Available
A. Scope of Work	250
A. 1. Deliverables	300
B. Technical Specifications	
B. 1. Organizational Experience	250
B. 2. Organizational References	100
C. Business Specifications	
C.1. Financial Stability	Pass/Fail
C.2. Performance Surety Bond	Pass/Fail
C.3. Letter Of Transmittal	Pass/Fail
C.4. Campaign Contribution Disclosure Form	Pass/Fail
C.5. Cost	100
TOTAL POINTS AVAILABLE	1000
C.6. New Mexico Preference - Resident Vendor Points per Section IV C. 6	100
C.7. New Mexico Preference - Resident Veterans Points per Section IV C.7	100

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. A. Scope of Work (See Table 1)

Points will be based on the thoroughness and relevancy that the contractor provides to the requested scope.

2. A.1. Deliverables (See Table 1)

Points will be awarded on the contractors proposed processes and procedures developed to address the deliverables.

3. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

4. B.2 Organizational References (See Table 1)

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

5. C.1 Financial Stability (See Table 1)

Pass/Fail only. No points assigned.

6. C.2 Performance Bond (See Table 1)

Pass/Fail only. No points assigned.

7. C.3 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

8. C.4 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

9. C.5 Oral Presentation (See Table 1)

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror a presentation agenda. (If no Oral Presentations are held all Offerors will receive the maximum amount of total points for this Evaluation Factor).

10. C.6 Cost (See Table 1)

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

Lowest Responsive Offeror's Cost

X Available Award Points

Each Offeror's Cost

11. C.7. New Mexico Preferences

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

C. EVALUATION PROCESS

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

APPENDIX A

REQUEST FOR PROPOSAL

Broadband Assessment & Data Collection

ACKNOWLEDGEMENT OF RECEIPT FORM

This Acknowledgement of Receipt Form should be signed and submitted no later than October 26, 5:00 PM MDT. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

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

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

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

Submit Acknowledgement of Receipt Form to:

To: Mark Roper

E-mail: mark.roper@state.nm.us

Subject Line: Broadband RFP