



AFFIRMATIVE ACTION

Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Contractor agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; communicate this policy in both English and Spanish to all persons concerned within his company, with outside recruitment services and the minority community at large; to provide NMHU on request a breakdown of his labor force by ethnic group, sex, and job category; and to discuss with NMHU his policies and practices relating to his affirmative action program.

AMENDMENT TO CONTRACT

This Contract shall not be altered, changed, or amended except by an instrument in writing executed by both parties.

INDEMNIFICATION AND INSURANCE

Contractor assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of the work by Contractor; its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of NMHU. Contractor shall indemnify and hold harmless NMHU; its officers, agents and employees from any and all liability for such losses, expenses, damages, demands and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action.

Contractor agrees that it and its subcontractors will maintain public liability and property insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of NMHU. Contractor is to include NMHU; its officers, Regents, agents and employees as a "Policy Holder" of such liability insurances.

INSURANCE REQUIREMENTS

- A. Without limiting any liabilities or any other obligation of the Contractor, the Contractor shall purchase and maintain (and cause its subcontractors to purchase and maintain), in a company or companies lawfully authorized to do business in the State of New Mexico, and rated at least A- VII in the current A.M. Best's, the minimum insurance coverage as follows:

1. Commercial General Liability Insurance with not less than \$1,000,000 combined single limit of liability for bodily injury and property damage for each occurrence. The policy shall include coverage for:
 - a. Bodily Injury;
 - b. Broad Form Property Damage;
 - c. Independent Contractors Coverage;
 - d. Personal Injury;
 - e. Blanket Contractual Liability;
 2. Workers' Compensation and Employer's Liability Insurance covering each employee engaged in the performance of the Work under this Contract, with a limit of liability in accordance with applicable law in the case of Workers' Compensation Insurance, and with the following limits of liability in the case of Employer's Liability Insurance:

Bodily injury by accident	\$500,000 each accident
Bodily injury by disease	\$1,000,000 policy limit
Bodily injury by disease	\$500,000 each employee
 3. Comprehensive Motor Vehicle Liability Insurance (if Contractor plans to utilize motorized automobiles for providing its food services) covering all owned, non-owned, and hired vehicles used in connection with the activities undertaken under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than \$500,000 per occurrence.
 4. Umbrella liability coverage of \$2,000,000 per occurrence.
- B. The Contractor shall furnish the NMHU one (1) copy each of Certificates of Insurance herein required for each copy of the Contract, showing coverage, limits of liability, covered operations, effective dates of expiration of policies of insurance carried by the Contractor. The Contractor shall furnish to the NMHU copies of limits. The Certificate of Insurance shall be in a format acceptable to the NMHU. Such certificates shall be filed with NMHU and shall also contain the following statements in the description section of the Certificate of Insurance:
- “The Regents of New Mexico Highlands University, New Mexico Highlands University, its agents, servants and employees are held as additional named insured.”**
- and
- “The insurance coverage certified herein shall not be cancelled or materially changed except after the insurer endeavors to provide forty-five (45) days written notice to the Owner.”**
- C. The Certificate of Insurance shall be forwarded to:
- New Mexico Highlands University
Attn: Purchasing Department
P.O. Box 9000
Las Vegas, NM 87701
- D. The State of New Mexico, its departments, agencies, boards and commissions reserve the right to request and receive certificates of insurance evidencing the required policies and endorsements within ten (10) calendar days of Contract signature.
- E. Failure on the part of the Contractor to meet these requirements shall constitute a material breach of contract, upon which the State of New Mexico, its departments, agencies, boards and commissions may terminate this Contract in accordance with

the provisions of this RFP and the resultant Contract, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by the State of New Mexico, its departments, agencies, boards and commissions shall be repaid by the Contractor upon demand, or the State of New Mexico, its departments, agencies, boards and commissions may offset the cost of the premiums against any monies due to the Contractor. Costs for coverage broader than those required or for limits in excess of those required shall not be charged to the State of New Mexico, its departments, agencies, boards and commissions. Contractor, NMHU, and their insurer(s) shall waive their rights of recovery against the one another and their employees and officers and, with respect to the Contractor, the State of New Mexico, its departments, agencies, boards, and commissions.

OTHER APPLICABLE LAWS

Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein. These terms & conditions are in addition to the State of New Mexico Procurement Code, §13-1-28 N.M.S.A. 1978. Any conflicts in these and other NMHU Terms & Conditions are superseded by the Procurement Code and Federal laws. In such a situation, all contracts, purchase orders, agreements and other related documents may be null and void.

COMPLIANCE WITH LAWS

The Contractor shall be familiar with, have a working knowledge of, and comply with all Federal, State, and local regulations, ordinances, codes and laws having jurisdiction over the services described herein. In addition, the Contractor must be familiar with and have experience preparing and filing all required forms, reports, and submittals. The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of New Mexico and that it will take such action as, from time to time, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of New Mexico or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all Federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.
- E. Agrees to operate under and be controlled by the Civil Rights Act of 1964, Title VI, and Executive Order No. 11246.

NEW MEXICO LAW PREVAILS

The place of performance of this Contract shall be the State of New Mexico. This Contract shall be construed, interpreted, and enforced according to the laws of the State of New Mexico, and all claims and disputes shall be brought in the state courts of the State of New Mexico.

PREVAILING WAGES

In accordance with §13-4-10, "Public Works Minimum Wage Act", every contract or project in excess of sixty thousand dollars (\$60,000) shall require a Wage Rate Determination and for the contractor, subcontractor, employer or a person acting as a contractor (hereinafter called "Contractor") shall pay all mechanics and laborers employed on the project, wages and fringe benefits as required of the Act.

The Contractor shall comply with all provisions and requirements of the Public Works Minimum Wage Act.

PUBLIC WORKS REGISTRATION

In accordance §13-4-13.1, all bidders or proposers submitting a bid or quote at more than sixty thousand dollars (\$60,000) shall be registered with the Labor Relations Division of the Workforce Solutions Department.

SEVERABILITY

In the event any term or provision of this Contract or any application to any person or circumstance shall be declared prohibited, invalid, or unenforceable to any extent in any jurisdiction, as determined by a court of competent jurisdiction, such term or provision shall, in that jurisdiction, be ineffective only to the extent of such prohibition, invalidity, or unenforceability, or as applied to such persons or circumstances, without invalidating or rendering unenforceable the remaining term or provision hereof or affecting the validity or enforceability of such term or provision in any other jurisdiction or as to other persons or circumstances in such jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of the contract on the party benefited by such term or provision.

SUBCONTRACTORS FAIR PRACTICES ACT

All Contractors shall comply with §13-4-31, the "Subcontractors Fair Practices Act".

SURVIVAL

The University and the Contractor agree that those obligations of the parties which by their terms require performance after termination or expiration of the contract, shall survive the termination or expiration of the contract.

CONFLICT OF INTEREST

The Contractor warrants that he/she has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract. The Contractor shall comply with the provisions of Section §10-16-12 N.M.S.A. 1978, which requires disclosure to the Office of Secretary of State of amounts received under state contracts when and if such provisions become applicable.

TERMINATION OF CONTRACT

A. Cancellation Without Cause for Convenience

1. Either party may cancel this Contract and/or the rendering of Services without cause by providing the other party written notice at least ninety (90) days prior to the non-renewal or expiration of the initial one (1) year term or during any subsequent one (1) year term. If cancellation is made by NMHU, it will be considered a cancellation for convenience;

2. Cancellation will be considered on the day the party mails or emails the cancellation notice. If emailed, an original must be mailed to the other party within two (2) business days;
3. Cancellation without cause does not grant the Contractor any financial compensation for future, anticipated or unearned profits;
4. The Contractor will be paid for Services rendered and accepted up to the last day of the cancellation. The Contractor is to continue to provide its Services until the last day of the cancellation and will be required to complete any and all remaining obligations; and
5. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

B. Cancellation for Default

1. Should the Contractor at any time violate any material conditions of the Contract or fail to comply with any of his contractual obligations, NMHU may, by written notice to the Contractor, demand that the Contractor remedy such violation or failure. Failure on the part of the Contractor to fulfill contractual obligations shall be considered just cause for termination of this Contract. NMHU will then no longer be bound to the Contract or further obligations;
2. If, after receipt of the notice from NMHU specifying each failure, the Contractor does not cure such failure within a period of twenty (20) business days, or by a different deadline specified by NMHU if, in its sole discretion, it feels a different period is acceptable, NMHU may terminate the whole or part of the Contract in question. An exception to this policy will occur in cases where the deficiency is deemed by NMHU to have the potential to result in direct endangerment to the health of any individual or individuals associated with Contractor or NMHU. In this case, NMHU may choose to intercede and take immediate corrective action, charging all costs of doing so to the Contractor;
3. If the Contractor does not correct a deficiency upon written notice by NMHU and within the time frame specified, NMHU may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. NMHU shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and NMHU can affirmatively collect damages;
4. In the event that NMHU terminates the Contract in whole or in part as provided herein, it may procure, in such a manner as it deems reasonable and appropriate, such Services as required by the Contract and the Contractor shall be liable for any cost for such Services. However, if the Contract is terminated in part, the Contractor shall be required to continue the performance of the Contract to the extent not terminated under the provisions of this clause, while remaining liable for any cost of Services obtained by NMHU to cover Services canceled due to the Contractor's inability or unwillingness to cure such failure;

5. Upon entry of a judgment of bankruptcy or insolvency by or against the Contractor, NMHU may terminate this Contract; and
6. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

C. Cancellation for Non-Appropriation of Funds

1. If NMHU funds are not appropriated or otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the new fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either NMHU's rights or Contractor's rights under any termination clause in this Contract. NMHU's fiscal year begins on July 1st of each year and concludes on June 30th of the following year;
2. The effect of termination of the Contract hereunder will be to discharge both Contractor and NMHU from future performance of the Contract, but not from their rights and obligations existing at the time of termination;
3. NMHU shall notify Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract or any portion thereof for each succeeding fiscal period beyond the first;
4. NMHU's determination of funding under this section shall be final and accepted by Contractor; and
5. In the event of termination and/or expiration of this Contract, Contractor agrees to provide reasonable cooperation in ensuring a smooth transition to another provider of Services.

D. Termination for Nonpayment

Contractor may terminate this Contract or suspend services for nonpayment of properly submitted and accepted invoices within forty-five (45) days of receipt of the invoice by NMHU. If NMHU disputes an invoice or portions of it, Contractor cannot terminate this Contract for nonpayment of the disputed portions.

STATE PROCUREMENT CODES AND STATUTES

Contractor is hereby put on notice that the State of New Mexico Procurement Code, §13-1-28 et seq. N.M.S.A. 1978, imposes civil and criminal penalties for its violation. In addition, the State of New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

OTHER APPLICABLE LAWS

Any provision required to be included in a purchase order or contract of this type by any applicable and valid executive order, Federal, State or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

ASSIGNMENT

Contractor shall have no right to assign or transfer any of its rights, duties or responsibilities contained in this RFP or subsequent amendments without the prior written approval of NMHU.