

NEW MEXICO HIGHLANDS UNIVERSITY

REQUEST FOR PROPOSAL(RFP)

21002-0001 CHAMP TYRONE ELECTRICAL SYSTEMS UPGRADE

NIGP code 91082

Service: Electrical System Upgrade, Champ Tyrone Music Building, 1152 11th Street, New Mexico Highlands University, Las Vegas NM. Mandatory Site Visit is Monday 4 January 2021, 10:00 AM MST (Las Vegas, NM Time)			
Date RFP Issued: Friday, December 18, 2020		Date RFP Due: Tuesday, January 19, 2021 <u>PRIOR to 3:00 PM LOCAL TIME</u>	
NMHU Sole Point-of-Contact: Ron Lopez Director of Purchasing	Phone Number: 505-426-2061		Email: ronaldlopez@nmhu.edu

I. Introduction

New Mexico Highlands University (NMHU) is seeking Requests for Proposals for the NMHU Champ Tyrone Music Building, Electrical System Upgrade; Scope of Services described at Section II, Scope of Work below, pursuant to the terms and conditions of this Request For Proposal (RFP). By issuing this RFP, NMHU is neither entering into a contract with Offerors, nor making an offer. Offerors not receive any rights whatsoever from submitting an offer.

Any offer submitted by Offeror shall represent a firm offer to provide the Work in accordance with NMHU's terms and conditions supplied with this RFP, unless Offeror includes its explicit objections to such terms and conditions with its response to this RFP. NMHU will review the objections and may approve changes that are in the best interest of NMHU.

During the period of the proposal, your POC will be limited to Ron Lopez in NMHU's Purchasing Department. Mr. Lopez has been designated as the contact person for this RFP. No Offeror may contact any NMHU employee, officer or member of the Board of Regents other than Ron Lopez regarding this RFP through the date of the Award. Any Offeror who makes such unauthorized contact shall be deemed to have violated the terms and conditions of this RFP and Offeror's offer may be rejected as a result. Questions regarding the RFP should be submitted in writing or email to the POC. Every effort will be made to respond to your questions within three (3) business days of their receipt. The question and response will be shared with all Offeror, with personal information removed to ensure anonymity. Offeror is to not rely on any oral representations or modifications made by POC or other NMHU staff.

**OFFER SUBMITTAL FORM
Attachment 1**

By signing below Offeror agrees to be bound by all terms and conditions of this RFP, its attachments, subsequent addendums and its Offer. Offeror also agrees to understand and comply with all local, state and federal codes, laws and regulations which govern the Work to be performed by the successful Offeror. This form is to be signed by an authorized representative of the company. It is to be completed in its entirety and the original is to be submitted with your offer.

Company Name

Name

Title

Signature

Date

Provide point of contact of Offeror:

Name

Title

Mailing Address (City, State, Zip)

Telephone Number

Fax Number

Email

PRICE:

All Labor, Materials, Overheads and Profit for Work Defined in SCOPE OF WORK/Statement of Objectives in accordance with this RFP:

\$ _____

II. SCOPE OF WORK/Statement of Objectives

Perform the Work as described in this RFP, its attachments, subsequent addendums, and subsequent change orders.

A. PROJECT SCOPE: Provide electrical systems for power to the building. Provide a new service for the Champ Tyrone building as indicated in the electrical plans, and comply with the 2017 National Electrical Code (NEC) and regulations and the state and local authorities having jurisdiction. All wiring shall be in EMT conduit or in MC cable. Wiring shall be color coded as follows: For 208/120V - Phase A-Black; Phase B-Red; Phase C-Blue, Neutral-White, and Ground-Green. Maintain indicated fire ratings of walls, partitions, ceilings, and floors at penetrations. Seal all penetrations with firestopping to maintain fire rating. Test all systems for proper operation. Awarded Contractor will need to comply with State Wage Rates and provide a price that takes State Wage Rates into consideration.

The Contractor will need to get the plans stamped and approved by the State Construction Industries Department (CID) prior to starting. Contractor will need to call for final electrical inspection and perform any adjustments required to pass the inspection. Contractor will need to comply with all NMHU regulations regarding COVID protections and maintaining a clean and safe construction site at all times. Exterior doors at the building will need to be locked by contractor at the close of each work day. Contractor will be required to work around the class schedules of the Music Department.

B. DRAWINGS: Champ Tyrone Riser Plan, 11/24/2020, 2 Pages. Drawings after 18 December may be picked up at New Mexico Highlands University Campus Police during the week of December 21-23, and December 28-30. NMHU Campus Police are located at Hewett Hall at 1103 National Avenue, Las Vegas, NM. Non-emergency phone number is 505-454-3278.

C. QUESTIONS: Technical Questions may be directed to the Project Engineer, **Salomé Arciniega**, MEP Engineer / Principal, **EMeC LLC**, PHONE: 505.730.9698 Other questions may be directed to: ronaldlopez@nmhu.edu

D. The Period of Performance will be approximately **75** days, and is anticipated to commence on or about 25 January 2020.

III. BONDS

A.) Offer/Bid Security Bond. An Offer Bond is required in the amount no less than five percent (5%) of the amount offered by the Offeror. The offer bond is to be provided by a surety company authorized to do business in this state or may be provided in the form of a cashier's check.

B.) Performance Bond. The Successful Offeror is to provide a performance bond satisfactory to NMHU executed by a surety company authorized to do business in the State of New Mexico and said surety is to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or NMHU. The amount of the performance bond is to be equivalent to one-hundred percent (100%) of the contract award.

C.) Payment Bond. The Successful Offeror is to provide a performance bond satisfactory to NMHU executed by a surety company authorized to do business in the State of New Mexico and said surety is to be approved in federal circular 570 as published by the United States treasury department or the state board of finance or NMHU. The amount of the performance bond is to be equivalent to one-hundred percent (100%) of the contract award.

D.) Offers shall reflect State Wage Rates and include the appropriate bonds. All offers shall comply with the New Mexico Procurement Code, and applicable Federal, State and local and labor laws.

IV. SITE VISIT

A mandatory site visit will be held on Monday, January 4, 2021 at 10:00 AM at the Champ Tyrone Music Building, 1052 11th Street, Las Vegas, NM. COVID-19 Instructions/Site Visit: Site Visit location is Champ Tyrone Music Building located at 1152 11th Street, Las Vegas, NM Wing and be controlled in groups of 5, escorted by HMHU personnel.

NMHU requires all visitors/contractors participate in a COVID-19 safety training. Contractors can take NMHU training or demonstrate that they have taken a COVID safety course with their own company. Contractors can provide a certificate of their training to EOCTraining@nmhu.edu. Please identify what company you represent in your email to EOCTraining. NMHU Visitor/Contractor COVID -19 training can be found at: <https://rise.articulate.com/share/dNpQ872OZs4DiiVp7Jw4gyGaeB1iy7EJ#/>

MASKS ARE REQUIRED

V. GENERAL REQUIREMENTS

SUBMIT THE FOLLOWING WITH YOUR OFFER. NMHU encourages the Offer Submittal Forms (Attachment 1) be one document/file and Attachments 2 through 5, as applicable be combined into a second document/file. Material Submittal Literature may be provided as a third document/file.

1. Offer Submittal Form (Attachment 1)
2. New Mexico Resident Preference Number or Veterans Preference Form (Attachment 2)
3. Addendum Acknowledgement Form (Attachment 3)
4. Supplier Conflict of Interest and Debarment/Suspension Certification Form (Attachment 4)
5. Resident Veterans Preference Certification Form-If Applicable (Attachment 5)
6. Campaign Contribution Disclosure Form (Attachment 6)

VI. DELIVERY OF OFFER

All offers may be submitted in a SEALED envelope or via the Vendor Registry website. Offers are HIGHLY encouraged to submit their offers and documents on-line through Vendor Registry website due to COVID accessibilities. Please write on the sealed envelope that contains your offer, the following if not using Vendor Registry:

"REQUEST FOR PROPOSAL # 21002-0001 DUE ON 19 JANUARY 20201 at 3:00 PM" at the University Post Office, 800 University Avenue, Las Vegas, NM

Failure to mark the sealed envelope may result in the offer being opened early or the offer may be declared non-responsive.

DELIVER MAY BE MADE AS FOLLOWS:

1.) If via hand delivery: (Purchasing Building under remodel, deliver to University Post Office)

New Mexico Highlands University
Student Union Building, SUB-130
Attn: Request for Proposal 21002-0001
800 National Avenue
Las Vegas, NM 87701

2.) If via United States Postal Service:

New Mexico Highlands University
Attn: Request for Proposal 21002-0001
P.O. Box 9000
Las Vegas, NM 87701

3.) If via FedEx, United Parcel Service, or any other carrier:

New Mexico Highlands University
Attn: Request for Proposal 21002-0001
1005 Diamond Avenue
Las Vegas, NM 87701

3.) Via Online Portal

You may download and submit a response to this RFP using the online portal provided by NMHU Purchasing. Please contact purchasing@nmhu.edu with any questions. Your point of contact is Ron Lopez 505-426-2061. Use of this Portal for submittal is encouraged in view of COVID-19 accesses.

NMHU is not responsible for problems with lost, missing, or late Offers. It is the responsibility of the Offeror to ensure prompt delivery of their Offer. NMHU will reject any Offer received after the RFP due date and time as identified above, unless it is determined by the Purchasing Agent that the delay in receipt of the Offer is due to error by NMHU staff.

VII. CLOSING OF OFFERS

Offers will be opened at the NMHU Purchasing Department on date specified in the RFP. NMHU Purchasing personnel will inventory the submission and secure proposals for evaluation.

VIII. AWARD OF OFFER

NMHU will award to the responsible offer that provides the best value, after clarification or negotiation, if deemed necessary, and Determination of Responsibility of Offeror. The Cost Factor is of most importance. The Technical Factor is of next importance. The Past Performance Factor is of least importance. When combined, all evaluation factors other than cost, are approximately equal to the Cost Factor.

IX. EVALUATION FACTORS. The evaluation will be performed by an evaluation team.

For the Cost Factor, the NMHU will evaluate by conducting a Cost Analysis in accordance with NM Stat § 13-1-45 (2019)

For the Technical Factor,

Subfactor A, the NMHU will evaluate such things, but not limited to, Offeror's impacts and abilities to meet the project time line.

Subfactor B, the NMHU will evaluate such things, but not limited to, Offeror's overall familiarity and expertise and degree of risk for successful completion of the work.

For the Past Performance Factor, the NMHU will evaluate such things as, but not limited to, the demonstrated degree risk in performing this project based on past relevant projects. Relevant projects are defined as projects of similar magnitude/scope (full building upgrade) of higher dollar value, or similar in value to the work in this RFP.

X. SUBMISSION REQUIREMENTS OF PROPOSAL. Offerors shall submit their proposals in the following manner:

For the Cost Factor, Offeror shall submit all elements of costs that are allowable, allocable, and reasonable to this project as it relates to Labor, Materials, Subcontracts, Overhead burdens and Profit. Format for this will be Contractor format; page limit **unrestricted**.

For the Technical Factor, Subfactor A, Offeror submission shall demonstrate information such as, but not limited to its workflows, assignments, operations etc. that is employs and will use on this project. This submission is limited to **20** pages, one-sided, double spaced, pitch no smaller than 12 pitch. Diagrams, if submitted, are excluded from page count.

For the Technical Factor, Subfactor B, Offeror's submission shall demonstrate items such as, but not limited to its approach, activities, events, methods, techniques, strategies, etc. it will employ in the completion of work defined in this RFP. This submission is limited to **20** pages, double-spaced, pitch no smaller than 12 pitch. Drawings/diagrams, if submitted, are excluded from page count.

For the Past Performance Factor, Offeror shall submit a synopsis of one-page each for 3 contracts for relevant projects completed over the past 3 years either commercial, county, state, or federal clients. The data for each contract shall be: Agency, Project Title, Project Description, Name of Primary Point of Contact of Customer, Email address, Phone Number, Value at Award, Value at Completion, Modifications issued and reason for modifications and Schedule, and revised schedule. Total page count for Past Performance is **3** pages.

XI. SUBMISSION METHODS. The RFP documents can be obtained at <https://www.nmhu.edu/purchasing> . or at <https://vrapp.vendorregistry.com/> Offerors are encouraged to download and submit a response to this RFP using the online portal provided by NMHU Purchasing. Offerors are encouraged to upload their response documents in two files; (1) the Attachments, and (2) Cost Proposal, Technical Proposal, and Past Performance Proposal. Please contact purchasing@nmhu.edu with any questions. Your point of contact is Ron Lopez 505-426-2061. Prospective Offerors can register on Vendor Registry by following these instructions:

1. [Purchasing Department - New Mexico Highlands University \(nmhu.edu\) www.nmhu.edu/purchasing-department](http://www.nmhu.edu/purchasing-department)
2. Click "Information for Vendors Link"
3. Click Vendor Registration, follow prompts.

NMHU reserves the right to waive irregularities, reject any or all offers, cancel this RFP for any reason and at any time, and/or award the project in its best interest.

XII. STATE PROCUREMENT STATUTES

Offeror must comply with all state procurement statutes pursuant to §13-1-1 through §131-199 N.M.S.A. 1978 and §13-4-1 through §13-4-43 N.M.S.A. 1978.

XIII. LOCAL, STATE AND FEDERAL LAWS

It is the responsibility of the Offeror to complete their Work and provide products that comply with all local, state and federal laws.

XIV. ADDITIONAL TERMS AND CONDITIONS Attachments 1 through 5 and all subsequent addendums are incorporated into this RFP.

**NEW MEXICO RESIDENT PREFERENCE NUMBER OR
VETERANS PREFERENCE NUMBER
ATTACHMENT 2**

- 1.) An Offeror with a valid **Residential Preference Certificate** will have his offer amount multiplied by .95 (95%) for comparison basis. This gives him an advantage of 5% against other Offerors that do not have a Residential Preference Certificate.
- 2.) A Offeror with a valid **Residential Veterans Preference Certificate** will have his offer amount:
 - a.) With annual revenues of \$1M or less are to receive a 10% preference discount and his offer amount will be multiplied by .90 (90%).
 - b.) With annual revenues of more than \$1M but less than \$5M are to receive an 8% preference discount and his offer amount will be multiplied by .92 (92%).
 - c.) With annual revenues of more than \$5M are to receive a 7% preference discount and his offer amount will be multiplied by .93 (93%).
- 3.) The Residential Veterans Preference and Residential Preference are not cumulative.
- 4.) If Offeror has a State of New Mexico Residential Preference Certificate or Residential Veterans Preference Certificate, in order to receive the preference, Offeror is to submit a copy of the Certificate.
- 5.) If the Offeror with a Preference Certificate is awarded its offer NMHU will pay the full amount that was offered, not the amount used for comparison basis.

NM RESIDENT PREFERENCE NUMBER OR RESIDENT VETERANS PREFERENCE NUMBER (if applicable):

**SUPPLIER CONFLICT OF INTEREST AND
DEBARMENT/SUSPENSION CERTIFICATION FORM
ATTACHMENT 4**

Conflict of Interest

No employee or Regent of New Mexico Highlands University has a direct or indirect interest in the Contractor or in the proposed transaction (unless Contractor is a publicly traded company and the employee or Regent's interest is less than one percent of the Contractor).

Contractor neither employs nor is negotiating to employ any NMHU employee or member of the NMHU Board of Regents.

Contractor did not participate directly or indirectly in the preparation of specifications upon which the offer is made.

If the Contractor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Contractor, please identify legislator:_____.

List below the name and social security number of any employee of the Contractor or person assisting in the proposed transaction in any way who was a NMHU employee within the preceding 12-month period.

Debarment/Suspension Status

1. The Contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice or proposed debarment from any Agency.
2. The Contractor agrees to provide immediate notice to New Mexico Highlands University Purchasing Department Buyer in the event of being suspended, debarred or declared ineligible by any department or Federal Agency, or upon receipt of a notice of proposed debarment that is received after the submission of the offer or offer but prior to the award of the purchase order or contract.

Certification

The undersigned hereby certifies that he/she has read the above Conflict of Interest and Debarment/Suspension Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the Contractor named below.

Signature: _____ Title: _____

Name Typed: _____ Date: _____

Company: _____ City _____

Address: _____ State: _____ Zip _____

**RESIDENT VETERANS PREFERENCE CERTIFICATION FORM
ATTACHMENT 5**

_____ (NAME OF CONTRACTOR/OFFEROR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one only

_____ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

_____ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

_____ I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1, and ending on December 31, the following to be true and accurate: "In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections §131-21 or §13-1-22 N.M.S.A. 1978, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be. "I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative) *

(Date)

*Must be an authorized signatory for the business.

The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award of the procurement involved if the statements are proven to be incorrect.

**Campaign Contribution Disclosure Form
ATTACHMENT 6**

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 131-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any:

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made by: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s): _____

Nature of Contribution(s): _____

Purpose of Contribution(s): _____

Signature Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature Date

Title (Position)

(Attach extra pages if necessary)

ATTACHMENT 7**GENERAL TERMS AND CONDITIONS**

I. **INSPECTION:** NMHU may inspect, at any reasonable time, any part of Contractor's plant or place of business which is related to performance of the Purchase Order. Final inspection will be made at the destination. Acceptance of delivery shall not be considered acceptance of the materials, supplies or services furnished. Any testing or inspection procedures required by the specification add to NMHU's rights under this paragraph.

II. **WARRANTIES:** Contractor warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. All applicable UCC warranties, express or implied are incorporated herein.

III. **ACCEPTANCE AND REJECTION:** If prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, or, if NMHU is entitled to revoke acceptance of them, NMHU may reject or revoke acceptance, require Contractor to correct without charge (including, but not limited to restocking and shipping costs) within a reasonable time. Contractor shall reimburse NMHU for all incidental and consequential costs related to unaccepted materials, supplies or service. Notwithstanding final acceptance and payment, Contractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive the right to claim damages for breach.

IV. **ASSIGNMENT:** This order is assignable by NMHU. Except as to any payment due hereunder, this order is not assignable by Contractor without written approval of NMHU.

V. **CHANGES:** NMHU may make changes within the general scope of this order by giving notice to Contractor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Contractor shall be recognized without written approval of NMHU. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change unless NMHU waives this condition. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the order as changed hereunder.

VI. **TERMINATION AND DELAYS:** NMHU may be written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. NMHU shall pay Contractor as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Contractor, as approved by NMHU, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to Contractor's actual cost, and may not include anticipated profits.

NMHU may by written notice terminate this order in whole or in part for Contractor's default if Contractor refuses or fails to comply with the provision of this order, or so fails to make progress as to endanger performance and does not cure such failures within a reasonable period of time. In such

event, NMHU may otherwise secure the materials, supplies or services ordered, and Contractor shall be liable for damages suffered by NMHU thereby, including incidental and consequential damages.

If after notice of termination, NMHU determines Contractor was not in default, or if Contractor's default is due to failure of NMHU, termination shall be deemed for the convenience of NMHU.

The rights and remedies of NMHU provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

As used in this Article, the word "Contractor" includes Contractor and his subcontractors/subsuppliers at any tier.

VII. 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.

VIII. 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.

IX. PATENT AND COPYRIGHT INDEMNITY: Contractor shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use, or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Contractor shall indemnify and hold NMHU harmless from any cost, expense, damage, or loss resulting therefrom.

X. DISCOUNTS: Prompt payment discounts will not be considered in computing the offered award amount. Any discount time will not begin until the materials, supplies or services have been received and accepted and correct invoice received by NMHU's Purchasing Department. In the event testing is required, the discount time shall begin upon the completion of the tests.

XI. **PENALTIES:** The Procurement Code, Section §13-1-28 et seq., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

XII. **TITLE AND DELIVERY:** Title to the materials and supplies passed hereunder shall pass to NMHU at the F.O.B. point specified subject to the right of NMHU to reject upon inspection. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from NMHU's Purchasing Department. Time is of the essence and the order is subject to termination for failure to deliver on time.

XIII. **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.