

**STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT**

Administrative Services Division
P. O. Box 2348
Santa Fe, New Mexico 87504



**REQUEST FOR PROPOSALS
FOR
AUDITING SERVICES**

RFP #12-630-5000-0013

ISSUE DATE: April 23, 2012

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Human Services Department or the Department requests proposals from Independent Public Accountants (IPAs) to perform the annual audit(s) of the Department's financial statements for the years ending **June 30, 2012, June 30, 2013, and June 30, 2014**. Only offerors that are qualified and in good standing with the Office of the State Auditor, **in accordance with the State Auditor Rule, Section 2.2.2 NMAC, have not conducted the Department's annual financial statement audits for the previous six consecutive fiscal years shall submit proposals**. This audit shall be performed in accordance with auditing standards generally accepted in the United States of America (GAAP), OMB-Circular A-133, and Requirements for Contracting and Conducting Governmental Audits (2.2.2 NMAC).

B. SUMMARY SCOPE OF WORK

1. Professional Audit Services to be rendered include:

- a. Financial Statement Audit;
- b. Federal Single Audit;
- c. Financial Statement Preparation;
- d. Other Non-Audit Services – Preparation of actuarial analysis of the Department's Medical Assistance Program's "Incurred but not Reported" (IBNR) liability at **June 30, 2012, June 30, 2013, and June 30, 2014**.

C. SCOPE OF PROCUREMENT

The Department requests a proposal to provide services, identified in this RFP, for the fiscal years ending **June 30, 2012, June 30, 2013 and June 30, 2014**. Pursuant to **Section 12-6-3 NMSA 1978, the Office of the State Auditor (OSA) has requested to participate in the annual audit for the Human Services Department. The OSA will complete 40% of the Single Audit and 40% of the Financial Audit. The Contractor shall be responsible for 60% of the Single Audit, 60% of the Financial Audit and 100% of the Financial Statement Preparation**. The term of the contract shall be one year, with the option to extend for two one-year terms at the same price, terms and conditions as stated on the original proposal. The scope of procurement shall encompass the Specifications Section IV of this RFP. The contract shall become effective beginning **June 1, 2012** or upon signature of the State Auditor. The Department shall have the option to extend the contract for two one year terms on any portion thereof. In no event shall the contract exceed duration of three years. This procurement shall result in a single source award.

D. PROCUREMENT MANAGER

The Department has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone numbers are listed below.

Donna Sandoval, Deputy Director
Human Services Department
Administrative Services Division
P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: (505) 827-7057
Fax Number: (505) 827-7187
E-Mail: Donna.Sandoval@state.nm.us

All deliveries via express carrier should be addressed as follows:

Donna Sandoval, Deputy Director
Human Services Department
Administrative Services Division
729 St. Michael's Drive
Santa Fe, NM 87505

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact **ONLY** the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Department.

E. DEFINITION OF TERMINOLOGY

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

"Agency" means the Department of Human Services. This term is used interchangeably with the "Department".

"Audit Rule" means title and chapter 2.2.2 of the NMAC (New Mexico Administrative Code), "Audits of governmental Entities", which is posted on the State Auditor's website at www.saonm.org.

"Chief Financial Officer" or "CFO" means the Department's Director of the Administrative Services Division.

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

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

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

"Department" means the New Mexico Human Services Department. This term is used interchangeably with "Agency".

“Deliverable” as defined in Section IV-A, item 3, Scope of Work.

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

“Determination” means the written documentation of a decision by the procurement manager including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.

“DFA” means the Department of Finance and Administration for the State of New Mexico.

“DFA/CRB” means the Department of Finance and Administration, Contracts Review Bureau.

“Evaluation Committee” means a body appointed by the Agency management to perform the evaluation of offeror proposals.

“Evaluation Committee Report” means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the State Auditor for contract award. It contains all written determinations resulting from the procurement.

“Finalist” is defined as 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.

“FY” means Fiscal Year.

“HSD” means the New Mexico Human Services Department, the Department.

“IPA” means Independent Public Accountant.

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

“NMSA” means New Mexico Statutes Annotated 1978.

“Offeror” is any person, corporation, or partnership which chooses to submit a proposal.

“OSA” means Office of the State Auditor.

“Procurement Manager” means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals; the only person authorized to respond to questions regarding the scope of

services to be performed under this RFP.

“Request for Proposals” or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“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.

“Responsive Offer” or “Responsive Proposal” means an offer or proposal 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.

F. BACKGROUND INFORMATION

Organization of the Department

The New Mexico Human Services Department is a cabinet-level agency in the Executive Branch of New Mexico State government. The Department is headed by a Cabinet Secretary appointed by the Governor and confirmed by the New Mexico State Senate. The Department consists of the Office of the Secretary and the following business units:

1. Administrative Services Division;
2. Child Support Enforcement Division;
3. Information Technology Division;
4. Income Support Division;
5. Medical Assistance Division;
6. Office of General Counsel;
7. Office of Human Resources;
8. Office of Inspector General;
9. Fair Hearings Office; and
10. Behavioral Health Services Division

The Department has approximately 2,108 authorized Full Time Equivalent (FTEs) and

contracts with community-based service providers throughout the State. There are 36 HSD/Income Support Division (ISD) field office locations statewide. There are 13 HSD/Child Support Enforcement Division (CSED) field office locations statewide, with an additional 3 satellite offices. The Department's central offices are located in 4 Santa Fe office buildings: Plaza La Prensa, Pollon Plaza Building (Office of the Secretary, Income Support Division, Child Support Enforcement Division, and Office of General Counsel); Ark Plaza Building (Medical Assistance Division); Plaza San Miguel Building (Administrative Services Division, Office of Inspector General (with a field office in Albuquerque), Fair Hearings Office and Information Technology Division.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement. The Department will adhere to this schedule as closely as possible but reserves the right to revise the schedule without need for RFP amendment, contingent on prior notice to Offerors.

A. SEQUENCE OF EVENTS

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issue of RFP	The Department	4/23/12
2. Acknowledgement of Receipt Form	Offeror	4/25/12
3. Deadline to Submit Questions	Offeror	4/27/12
4. Response to Written Questions	The Department Questions/RFP Amendments	See below Narrative
5. Submission of Proposal	Offeror	5/03/12
6. Proposal Evaluation	Evaluation Committee	5/04/12
7. Selection of Finalists	Evaluation Committee	5/04/12
8. Finalize Contract	The Department, Offeror	5/07/12
9. State Auditor's Office Approval	The Department	5/10/12
10. Contract Award	The Department	5/18/12
11. Contract Effective Date	The Department, Offeror	6/01/12
12. Protest Deadline	Offeror	15 Days after the Contract Award

*Dates subject to change based on number of responses to evaluate and final approval from federal partners, if applicable.

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

This RFP is being issued by the Department on **April 23, 2012**. Potential offerors may obtain a copy of the RFP from the Procurement Manager. The RFP may also be obtained from the HSD website at <http://www.hsd.state.nm.us>.

2. Acknowledgement of Receipt Form

Offerors shall submit the completed, signed Acknowledgement of Receipt to the Procurement Manager (See Section I, Paragraph D) by the date listed in Section II, Paragraph A, Sequence of Events. The form should be signed by the offeror's representative, dated, and delivered by hand, facsimile or by mail. Failure to return this form may constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the offeror's organization name may be deleted from the procurement distribution list.

3. Deadline to Submit Written Questions

Potential offerors may submit written questions as to the intent or clarity of this RFP until close of business on the date listed in Section II, Paragraph A, Sequence of Events. All written questions must be addressed to the Procurement Manager (See Section I, Paragraph D).

4. Response to Written Questions

Written questions will be answered by the Procurement Manager by e-mail within 24 hours of receipt of the question. The questions will be addressed to ALL OFFERORS on the procurement distribution list, within 24 hours of receipt of the question.

5. Submission of Proposal

ALL PROPOSALS MUST BE RECEIVED NO LATER THAN 2:00 PM MOUNTAIN DAYLIGHT TIME ON May 3, 2012. PROPOSALS RECEIVED AFTER THIS DEADLINE WILL NOT BE ACCEPTED. They will be returned to the offeror unopened. The date and time will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Audit Services Request for Proposal. Proposals submitted by facsimile and other electronic means will not be accepted.

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to Section 13-1-1-16 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

6. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by the Department utilizing the State Auditor's Office's Agency Audit Contract Professional Evaluation Form (Appendix B). This process will take place approximately as stated in Section II, Paragraph A, Sequence of Events. 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, but 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 finalists and the Procurement Manager will notify the finalist as stated in Section II, Paragraph A, Sequence of Events. Only finalists will be invited to participate in the subsequent steps of the procurement.

8. Finalize Contract

The contract will be finalized with the most advantageous offeror as stated in Section II, Paragraph A, Sequence of Events. In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with the next most advantageous offeror without undertaking a new procurement process.

9. Contract Award

After review of the Evaluation Committee Report, the recommendation of the Evaluation Committee, and the signed contract, the State Auditor will award the contract as stated in Section II, Paragraph A, Sequence of Events. This date is subject to change at the discretion of the Department.

The contract shall be awarded to the offeror or offerors whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

10. Protest Deadline

Any protest by an offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive offerors shall begin on the day following the contract award.

Protests must be written and must include the name and address of the protestor and the request for proposals number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the State Purchasing Agent. The protest must be delivered to the Central Purchasing Agent.

Danny Sandoval, Acting Director
Administrative Services Division
Human Services Department
729 St. Michael's Drive
Santa Fe, New Mexico 87505

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the State Purchasing Agent's procurement regulations, 1.4.1 NMAC.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

Any cost incurred by the offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the offeror.

3. Prime Contractor Responsibility

Any contract that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Agency. The Agency will make contract payments to only the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

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. The Department 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 signed by the offeror's duly authorized representative addressed to the Procurement Manager.

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety

(90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. 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 data for which an offeror has made a written request for confidentiality, the Central Purchasing Agent shall examine the offeror's 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 confidential data.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the 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 termination will be effected by sending written notice to the contractor. The Department'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 concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by the Agency in writing through the Procurement Manager or in this RFP or on the website of the State Auditor's Office (www.saonm.or) should be used as the basis for the preparation of offeror proposals.

15. Contract Terms and Conditions

The contract between the Department and a contractor will follow the format specified by the State Auditor's Office. Appendix C, Sample Contract, gives examples of similar terms and conditions. The Offeror must be willing to sign and return Appendix A, Acknowledgement of Receipt Form, to participate.

The contents of this RFP, as revised and/or supplemented, and the successful offeror's accepted proposal may be incorporated into and become part of the contract. Should negotiation of additional terms be required, State Auditor approval must first be obtained.

In the event the offeror's accepted proposal conflicts with the RFP, the proposal governs, and, in the event the contract conflicts with the proposal, the contract governs.

Should an offeror object to any of the Departments' terms and conditions, as stated in this Section or in Appendix C, that offeror must propose specific alternate language. The Department may or may not accept the alternative language suggested by the offeror. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Department 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.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and

conditions which they expect to have included in a contract negotiated with the Department.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Department and the selected offeror 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 offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Eligible Entities

To be eligible to submit a proposal under this RFP, potential offerors must have the proper certifications and licenses to do business in New Mexico as follows:

a. Corporations.

- (1) File Article of Incorporation with the Public Regulation Commission and recorded with the County pursuant to NMSA 1978, Section 53-4-6.
- (2) Name of registered agent pursuant to NMSA 1978, Section 53-5-2.
- (3) Certificate of Authority from the Public Regulation Commission indicating that the corporation is authorized to engage in business in New Mexico pursuant to NMSA 1978, Sections 53-17-6 and 53-17-8.
- (4) Obtain a Federal employer identification number.
- (5) Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

b. Limited Liability Companies.

- (1) Registered office and registered agent for service of process that is a New Mexico resident or domestic corporation, limited liability company, or partnership that is located in New Mexico.
- (2) File an Application for Registration with the Public Regulation Commission to conduct business in New Mexico and must obtain a Certificate of Good Standing from the Public Regulation Commission to conduct business in New Mexico.
- (3) Obtain a Federal employer identification number.
- (4) Register with the New Mexico Taxation and Revenue Department and obtain a

tax identification number to report gross receipts taxes.

c. Limited Partnerships.

- (1) Apply for Certificate of Registration with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-2-1 through 54-2-48.
- (2) File a Statement of Qualifications with the New Mexico Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- (3) Obtain a Federal employer identification number.
- (4) Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

d. General Partnerships.

- (1) File a Statement of Partnership Authority with the Secretary of State pursuant to NMSA 1978, Sections 54-1A-101 through 54-1A-1206.
- (2) Obtain a Federal employer identification number.
- (3) Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

e. Sole Proprietorships and Joint Ventures.

- (1) Obtain a Federal employer identification number.
- (2) Register with the New Mexico Taxation and Revenue Department and obtain a tax identification number to report gross receipts taxes.

20. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

21. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Agency, meeting its needs adequately.

22. Notice

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

23. Department Rights

The Agency reserves the right to accept all or a portion of an offeror's proposal.

24. Right to Publish

Throughout the duration of this procurement process and contract term, potential offerors, 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 or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

25. Ownership of Proposals

All documents submitted in response to this RFP shall become the property of the Department and the State of New Mexico. However, any technical or user documentation submitted with the proposals of non-selected offerors shall be returned after the expiration of the protest period.

All documents submitted in response to this RFP shall be available to be picked up by the offerors after the expiration of the protest period with the following exception. Two complete copies of all proposals including the Best and Final Offer, if one was submitted, shall be placed into the procurement file. Those documents will become the property of the Department and the State of New Mexico.

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.

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the offeror's possession and the version maintained by the Department, the version maintained by the Agency shall govern.

28. Amendment to RFP

Any amendments to this RFP will be issued to all offerors submitting an

Acknowledgement of Receipt form (see Appendix A). The offerors will be required to acknowledge receipt of the amendments in writing.

29. Confidentiality

All information provided to or developed by the Contractor from any source whatsoever in the performance of this Contract shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the Department and the State Auditor.

The Contractor(s) agree 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.

30. Suspension and Debarment Clause/Form

The Contractor assures that neither it nor any of its subcontractors are in default of any of their required certifications or licenses to engage in business in New Mexico as noted in Section II, Paragraph C, Item 19 and in Section IV, Paragraph B, Item 3. The Offeror must complete the certification form in Appendix F to certify compliance with Federal regulations relating to suspension and debarment.

31. New Mexico Employees Health Coverage Form

The Offeror must agree with the terms and submit a signed New Mexico Employees Health Coverage Form (Appendix E) with the submittal of their proposal. (See Section II,)

32. Campaign Contribution Disclosure Form

Offeror must complete and sign the Appendix D Campaign Contribution Disclosure Form whether any applicable contribution has been made or not. This form must be submitted with each proposal whether an applicable contribution has been made or not.

III. RESPONSE FORMAT AND ORGANIZATION

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors shall provide one (1) original and five (5) identical copies of their proposal (Binder 1); and one (1) original and five (5) copies of the cost proposal (Binder 2) to the location specified in Section I, Paragraph D of this document, on or before the closing date and time specified for receipt of proposals. In addition, all offerors shall provide one (1) electronic copy of all materials in Binders 1 and 2.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. The size of the proposal is recommended not to exceed one hundred (100) single-sided pages. Exclusions to this limitation will be the Letter of Introduction; Table of Contents; Covers; Dividers; Resumes; Other attachments, such as letters of appreciation, etc; Acknowledgement of Amendments (if applicable). Electronic copies of Binders 1 and 2 must be in Word, PDF or Excel formats.

1. Proposal Organization

The proposal must be organized in two (2) binders and indexed in the following format and must contain, as a minimum, all listed items in the sequence indicated.

Binder #1

- a. Letter of Transmittal
- b. Table of Contents
- c. Proposal Summary
- d. Response to Mandatory Specifications

Binder #2

- a. Completed Cost Response Form
- b. Response to Agency Terms and Conditions
- c. Other Supporting Material

Within each section of their proposal, offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in binder 2 with the cost response form.

The proposal summary may be included by offerors to provide the Evaluation Committee with an overview of the technical and business features 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.

Offerors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

2. Letter of Transmittal

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- a. Identify the submitting organization;
- b. Identify the name and title of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title and telephone number of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles and telephone numbers of persons to be contacted for clarification;
- e. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f. Be signed by the person authorized to contractually obligate the organization;
- g. Acknowledge receipt of any and all amendments to this RFP.

IV. SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narratives along with required supporting materials will be evaluated and awarded points accordingly.

A. INFORMATION

1. Agency Resources

The following resources will be provided to contractor personnel for use on this contract:

- * Office space;
- * Desk, telephone, computer connection, printer;
- * Access will be available to copiers and fax machines.

2. Work Performance

For the purpose of preparing proposals, Offerors are to assume that the majority of the on-site work will be performed at the location identified below. However, there may be need to also visit the program Divisions to review files. Those Division's headquarters are located across the street from the address. Field offices are located throughout the State of New Mexico.

The Human Services Department
Administrative Services Division
729 St. Michael's Drive
Santa Fe, New Mexico 87505

3. Detailed Scope of Work

Deliverables that the Independent Public Accountant (IPA) is responsible for providing include:

- a. Engagement Letter and Provided by Client Listing (PBC List) – to be provided to the Agency within ten days after the audit entrance conference.
- b. Financial Statements – Draft copy to be completed and submitted to Agency Management for review by **November 16, 2012**.
- c. Prepare actuarial analysis of the Agency's Medical Assistance Program's "Incurred But Not Reported" (IBNR) liability **at June 30, 2012; June 30, 2013; and, June 30, 2014**.
- d. Final Audit Report – to be submitted to the State Auditor's Office and the Deputy Secretary for DFA on or before **December 14, 2012** – including the Independent Auditor's Report; Financial Statement Footnotes; Supplemental Schedules;

Schedule of Expenditures of Federal Awards (SEFA); Audit Findings; Status of Prior Year Findings; and, all other materials required by Federal or State oversight entities.

- e. IPA to conduct Audit Progress Meetings, at least semi-monthly, with Agency's financial and executive management staff.
- f. IPA to provide DFA any information required, including the Audit Plan and an Audit Schedule that meets the criteria established by DFA.
- g. To provide other audit related procedures, and information as requested the Agency's Management, or Federal Oversight Agencies; Office of the State Auditor; State Treasurer's Office, Department of Finance and Administration; and, the Legislative Finance Committee.
- h. IPA to present its audit report to the Agency's executive and financial staff, and the State Auditor's Office, at an Exit Conference. The Agency's executive management may require audit workshop(s) to review the annual audit report and any areas of interest or concern regarding the Agency's annual audit.
- i. IPA to prepare the federally required "Data Collection Form" and provide it to the ASD Director, no later than thirty (30) days after the release of the Audit Report by the Office of the State Auditor, for transmittal to the Federal Audit Clearinghouse.

B. SPECIFICATIONS

Mandatory Specifications: Offerors must reply to each mandatory specification. Failure to respond to each mandatory specification will result in disqualification.

1. Independence (Pass/Fail, zero points assigned)

In a narrative format, offeror must provide an affirmative statement that it is independent of the Agency as defined by the U.S. General Accounting Office's *Government Auditing Standards* (1988).

The offeror must also list and describe the offeror's professional relationships involving the Agency for the past five (5) years, together with a statement explaining why such relationships does not constitute a conflict of interest relative to performing the proposed audit.

2. Change in Personnel (Pass/Fail, zero points assigned)

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the offeror, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the Department. However, in either case, the Department retains the right to approve or reject replacements. Other audit personnel may be changed with the written approval of the Department, provided that replacements have substantially the same or better qualifications or experience, as deemed by the Department. A statement of concurrence is required.

3. License to Practice in New Mexico (Pass/Fail, zero points assigned)

Offeror must be licensed to practice public accounting in New Mexico. A statement of concurrence and a copy of the applicable license(s) are required. In addition, all offeror-IPAs must appear on the State Auditor's list of IPAs eligible to conduct State agency audits for the State of New Mexico. A statement of concurrence is required.

4. Prior Engagements with the State of New Mexico (Pass/Fail, zero points assigned)

Offerors must list all engagements within the last five (5) calendar years, ranked on the basis of total staff hours, for the State of New Mexico by type of engagement (i.e., audit, management advisory services, other). For each engagement, the offerors shall indicate the scope of work, beginning and ending dates that the engagement was performed, and the name and telephone number of the principal client contact.

5. Similar Engagements with Other Government Entities (Pass/Fail, zero points assigned)

For the offeror's office that will be assigned responsibility for the audit, list the most significant engagement (maximum of 5) performed in the last five (5) years that are similar to the engagement described in this request for proposals. These engagements shall be ranked on the basis of total staff hours.

6. Identification of Anticipated Potential Audit Problems (Pass/Fail, zero points assigned)

Offerors must identify and describe any anticipated potential audit problems, resolution approach, and any assistance that will be requested from the Agency.

7. Cost Proposal (Up to 10 points may be awarded)

Responding to cost proposal is mandatory. Failure to respond will result in disqualification. Points will be awarded based on response. The total proposed cost for performing the audit must be itemized for each of the three contract years, using the criteria below. **As noted in Section I, Item C, Scope of Procurement, the OSA has requested to participate in the audit of HSD. The offeror shall submit their bid based upon the completion of 60% of the Single Audit, 60% of the Financial Audit and 100% completion of the Financial Statement Preparation.**

The offeror shall propose, by designated category, an hourly composite rate and estimate of hours to complete each category, including all out-of-pocket, audit-related expenses, such as travel, per diem and applicable overhead.

The Offeror shall also provide a separate breakout of the following:

- Hourly rates to be charged by type of personnel, if applicable;
- Monthly rate and number of hours estimated to complete the scope of services (this may be presented in phases of the work).
- Additional items to be included in cost such as travel, per diem, applicable overhead, etc.

The formula that will be utilized for the calculation of points for this item will be:

The lowest cost proposal (from all the proposals received) divided by the cost of the proposal the Agency is recommending; the quotient derived from this calculation is then multiplied by 10 and produces the final point total.

Desirable Specifications: To obtain maximum amount of points, offerors should respond to each specification thoroughly.

8. Offeror Qualifications and Experience (Up to 30 points may be received)

State the size of the firm, size of governmental audit staff, location of the office from which the work on this engagement is to be performed, number and nature of the professional staff to be employed in this engagement on a full-time basis, and the number and nature of the staff to be so employed on a part-time basis.

If the offeror is a joint venture or consortium, the qualifications of each offeror comprising the joint venture or consortium should be separately identified and the offeror is to serve as the principal auditor should be noted, if applicable.

Offerors are also required to submit a copy of the report of its most recent external quality control review and a statement whether that quality control review included a review of specific government engagements.

Provide the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years and disclose any circumstances and status of disciplinary action taken or pending with state regulatory bodies or professional organizations.

Offerors should also provide a copy of the profile submitted to the State Auditor, in accordance with 2.2.2 NMAC (State Audit Rule); a list of subcontractors, including qualifications and area(s) of responsibility; and, a completed Campaign Contribution Disclosure form as required by Senate Bill 344, signed into law March 6, 2006.

9. Partner, Supervisory and Staff Qualifications and Experience (Up to 40 points may be received)

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the

engagement and indicate whether each such person is licensed to practice as a certified public accountant (CPA) in New Mexico.

Provide information on relevant, individual CPA for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Offeror should include the name of the principal member or officer of the offeror who will be responsible for the administration of the contract and an organizational chart indicating the names of all persons to be assigned to the project, their areas of expertise and the percent of time they will be assigned to the project.

10. Specific Audit Approach (Up to 15 points may be awarded)

Offerors should provide a work plan that includes audit timing and an explanation of the audit methodology to perform the services required. The work plan should reference sources of information such as the Agency's budget and related materials, organizational charts, manuals and programs, financial and other management information systems. The work plan shall include a narrative description of the scope, effort and approach the offeror will use to accomplish the work.

11. Firm Strengths and Weaknesses (Up to 5 points may be awarded)

Offerors should list the strengths and weaknesses of their firm.

V. EVALUATION

A. EVALUATION POINT TABLE/SUMMARY

The following is a summary of Section IV, Specifications identifying points assigned to each item. These weighed factors will be used in the evaluation of offeror proposals.

	Factor	Points Available
1.	Independence	Pass/Fail, 0 points
2.	Change in Personnel	Pass/Fail, 0 points
3.	License to Practice in New Mexico	Pass/Fail, 0 points
4.	Prior Engagements with the State of New Mexico	Pass/Fail, 0 points
5.	Similar Engagements with other Government Entities	Pass/Fail, 0 points
6.	Identification of Anticipated Potential Audit Problems	Pass/Fail, 0 points
7.	Cost Proposal	10
8.	Offeror Qualifications and Experience	30
9.	Partner, Supervisory and Staff Qualifications and Experience	40
10.	Specific Audit Approach	15
11.	Firm Strengths and Weaknesses	5
	TOTAL	100

B. EVALUATION FACTORS

Points will be awarded on the basis of the following evaluation factors:

1. Independence – Affirmative Statement. (Pass/Fail, zero points assigned).
2. Change in Personnel – Concurrence Statement. (Pass/Fail, zero points assigned).
3. License to Practice in New Mexico (Pass/Fail, zero points assigned).
4. Prior Engagements with the State of New Mexico. (Pass/Fail, zero points assigned).
5. Similar Engagements with Other Government Entities. (Pass/Fail, zero points assigned).
6. Identification of Anticipated Potential Audit Problems (Pass/Fail, zero points assigned).
7. Cost Proposal - Evaluation of Audit Fees. (Up to 10 points may be awarded).
8. Offeror Qualifications and Experience - Capability of Firm. (Up to 30 points may be awarded).
9. Partner, Supervisory and Staff Qualifications and Experience - Technical Experience. (Up to 40 points may be awarded).

10. Specific Audit Approach - Work Plan. (Up to 15 points may be awarded).
11. Firm Strengths and Weaknesses - Evaluation requirement of the Office of the State Auditor. (Up to 5 points may be awarded).

APPENDIX A
Acknowledgement of Receipt Form

REQUESTS FOR PROPOSALS
FOR
AUDITING SERVICES
RFP # 12-630-5000-0013

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix B.

The acknowledgement of receipt should be signed and returned to the Procurement Manager, identified in Section I, Paragraph D of this RFP, no later than close of business on **April 25, 2012**. Only potential offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments, if any are issued.

OFFEROR: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

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

Offeror does/does not (**circle one**) intend to respond to this Request for Proposals.

APPENDIX B
State Auditor's Form

NEW MEXICO STATE AUDITOR'S OFFICE
Audit Contract Proposal Evaluation Form
Part One

Name of Agency _____
 Agency Contact _____ Phone # _____
 Audit Firm Name _____ Date Completed _____

Evaluation Criteria	Points	Points Awarded
Section I. <u>Capability of Firm</u>		
A) The firm has the resources to perform the type and size of audit required. # of firm team members _____ Total audit hours available _____	0-5	
B) External Quality Control Review (Peer Review) 1. Peer review results: Obtain most recent copy of the external quality control review report including letter of comments 2. - Opinion received _____ Unqualified _____ 10 Qualified _____ 5	0-10	
If report is less than modified (adverse) STOP HERE. FIRM DOES NOT QUALIFY. 3. Results of reference checks and agency's prior experience with firm (check should include timeliness, planning, technical expertise, etc.).	0-10	
C) Organization and completeness of proposal or bid for audit services.	0-5	
Section I Total		
Section II. <u>Work Requirements & Audit Approach</u>		
A) Auditor knowledge of agency needs and product to be delivered.	0-5	
B) Proposal or bid contains a sound technical plan and realistic estimate of time to complete the audit. Start Date _____ End Date _____	0-5	
C) Plans for using agency staff, including internal auditors.	0-3	
D) If the proposal or bid is for a multi-year contract, approach for planning and conducting the work efforts of subsequent years.	0-2	
Section II Total		
Section III. <u>Technical Experience</u>		
A) Governmental audit experience of audit firm Name of on-site manager _____	0-20	
B) Audit team experience: 1. Specialization in your type of government (e.g., state agencies, schools, hospitals, counties, cities, etc.), including component units (housing authorities, charter schools, foundations)	0-15	
C) Attendance at continuing professional education seminars or meetings on auditing, accounting and regulations directly related to state and local government audits and the agency.	0-5	
Section III Total		
Section IV. <u>Firm Strengths or Weaknesses</u>		
Specify _____	0-5	
Section IV Total		
Total All Sections		

Submit a copy of this form for the proposal selected to the State Auditor along with the Agency recommendation letter.

REQUEST FOR PROPOSALS
HSD RFP 12-630-5000-0013
AUDITING SERVICES

New Mexico State Auditor's Office
Agency Audit Contract Proposal Evaluation Form
Part Two

Name of Agency	Phone #
Agency Contact	
Audit Firm	

Cost is to be evaluated **ONLY** upon completion of Part One of this two-part evaluation form. Evaluate cost separately for the top **THREE CHOICES ONLY** from Part One. **ADD** parts One and Two in making your **FINAL** recommendation.

EVALUATION OF AUDIT FEES		
Please note: If you have a multi-year proposal, add the total of each year together to arrive at one total for the combined three year period (example: 3 yr proposal, each years fee is \$5,000. the combined total is \$15,000. which would be used in the calculation below.)	Maximum Points	Points Awarded
<p><u>COMPLETE THE CALCULATION:</u></p> <p>Insert the lowest cost proposal (from all proposals received) and divide it by the cost of the proposal the agency is recommending</p> <p>= Times (x) by 10</p> <p style="text-align: right;">= Total Points Awarded</p>	\$ _____ \$ _____ x 10 _____	10
SCORE	Maximum Points	Points Awarded
SCORE, Part One: Bring forward score from Part One of Evaluation Form	90	
FINAL SCORE	100	

BREAKDOWN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	1 st Year Hours FYE 6/30/___	1 st Year Cost FYE 6/30/___	2 nd Year Hours FYE 6/30/___
Financial Statement Audit	_____	_____	_____
Federal Single Audit	_____	_____	_____
Financial Statement Preparation	_____	_____	_____
Other allowed nonaudit services	_____	_____	_____
Other (housing authorities, or other component units)	_____	_____	_____
SUB TOTAL	_____	_____	_____
Gross Receipts Tax		_____	_____
TOTAL COMPENSATION		=====	=====

Evaluated By

Name and Title	Date
Name and Title	Date
Name and Title	Date

[2.2.2 NMAC Appendix B - Rp 2.2.2 NMAC Appendix A, 4-15-08]

APPENDIX C
Sample Professional Services Contract

PSC XX-630-XXXX-XXXX
CFDA XX.XXX

STATE OF NEW MEXICO

HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the State of New Mexico **Human Services Department**, hereinafter referred to as the “HSD” or the “Agency”, and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor”, and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work

A. The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached to this Agreement and incorporated by reference.

B. Performance Measures.

The Contractor shall substantially perform the Performance Measures described in Exhibit A, Scope of Work, attached to this PSC and incorporated herein by reference.

2. Compensation

A. The HSD shall pay to the Contractor in full payment for services satisfactorily performed [*at the rate of _____ dollars (\$ _____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.)*], such compensation not to exceed (AMOUNT) including gross receipts tax, if applicable. **This amount is a maximum and not a guarantee that the work assigned to be performed by the Contractor under this PSC shall equal the amount stated herein. The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor is responsible for notifying the HSD when the services provided under this PSC 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 PSC being amended in writing prior to those services in excess of the total compensation amount being provided.**

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work, including gross receipts tax, if applicable, and expenses, not to exceed (AMOUNT, IN WORDS THEN IN PARENTHESES) in FYXX.

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 DFA. All invoices MUST BE received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

(OR CHOICE – MULTI-YEAR)

HSD shall pay to the Contractor in full payment for services satisfactorily performed pursuant to THE Scope of Work, including gross receipts tax, if applicable, and expenses, not to exceed (AMOUNT) in FYXX.

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

B.(REPLACES B, ABOVE, WHICH IS FOR A SINGLE YEAR CONTRACT) Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. **Invoices received after such date WILL NOT BE PAID.**

C.The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within thirty (30) 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 HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) 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 HSD 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 DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination

A.Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B.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 the 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 Agency.

9. Release

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

10. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

11. Product of Service -- Copyright

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

12. Conflict of Interest; Governmental Conduct Act

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

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

1) in accordance with Section 10-16-4.3 NMSA 1978, 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 Section 10-16-7(A) NMSA 1978 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 Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3)in accordance with Section 10-16-8(A) NMSA 1978, (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 Section 10-16-9(A) NMSA 1978 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 Section 10-16-9(A) NMSA 1978, 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 Section 10-16-13 NMSA 1978, 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 Section 10-16-3 and Section 10-16-13.3 NMSA 1978, 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.The 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. The Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, the Contractor learns that the 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 the 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, Sections 13-1-28 through 13-1-199, NMSA 1978, 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 the Contractor is found not to be in compliance with these requirements during the life of this Agreement, the 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 Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, the 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

A. 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 five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

B. Contract for an independent A-133 audit at the Contractor's expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be made available to the HSD and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD.

D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If

either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain a schedule of financial expenditures for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

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 the Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, the 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 the Contractor and the State exceed \$250,000 dollars.

B. The 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. The Contractor agrees 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: <http://insurenemexico.state.nm.us/>.

22. Employee Pay Equity Reporting

The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If the contractor has two hundred fifty (250) or more employees the contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, the contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should the contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the contractor agrees to provide the required report within ninety (90) days of

meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. The Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, the contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. The Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. The Contractor acknowledges that this sub requirement applies even though the contractor itself may not meet the size requirement for reporting and be required to report itself. Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if the Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition

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

24. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices

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

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

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

26. Authority

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

27. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: 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; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been

excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

(1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

(2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the PSC.

C. As required by statute, regulation or requirement of this PSC, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

28. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

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

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

28. Non-Discrimination

A. The Contractor agrees to comply fully with Title IV of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this PSC, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this PSC under any program or activity.

D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

29. Drug Free Workplace

A. Definitions. As used in this paragraph—

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C § 812, and as further defined in regulation at 21 CFR §§ 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about:

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;

- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);

(4) Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this PSC, the employee will:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

C. The Contractor, if an individual, agrees by entering into this PSC not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

30. Findings and Sanctions

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the services provided pursuant to this PSC and the administration thereof.

B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

31. Performance

In performance of this PSC, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

A.All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.

B.Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this PSC. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this PSC. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

C.All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

D.No work involving returns and return information furnished under this PSC will be subcontracted without prior written approval of the Internal Revenue Service (IRS).

E.The Contractor will maintain a list of employees authorized access. Such list will be provided to the HSD and, upon request, to the IRS reviewing office.

F.The HSD will have the right to void the PSC if the Contractor fails to provide the safeguards described above.

32. Criminal/Civil Sanctions

A.Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by Internal Revenue Code (IRC) Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

B.Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any returns or return information made available in any format shall be used only for the purpose of carrying out the provisions of this PSC. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this PSC. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

C. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.

D.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to the HSD records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

E. Granting a contractor access to Federal Tax Information (FTI) must be preceded by certifying that each individual understands the HSD's security policy and procedures for safeguarding IRS information. The Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the HSD's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See IRS Publication 1075, *Tax Information Security Guidelines*). For both the initial certification and the annual certification, the Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

33. Inspection

The IRS and the HSD shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this PSC. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

The remainder of this page intentionally left blank.

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

By: _____ Date: _____
Cabinet Secretary
Human Services Department

By: _____ Date: _____
Office of General Counsel
Human Services Department

By: _____ Date: _____
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 00-000000-00-0

By: _____ Date: _____
Taxation and Revenue Department

This Agreement has been approved by the DFA Contracts Review Bureau:

By: _____ Date: _____
DFA Contracts Review Bureau

Exhibit A
Scope of Work

Performance Measures

(Performance Measures should be based on Scope of Work and must be tied to the Agency's Strategic Plan. The Plan should be referenced in the Measures and the applicable part of the Strategic Plan copied below or in an attachment. To the extent possible based on the nature of the work to be performed, the Measures should be "Output" oriented and specify an "Outcome.")

Performance Measures in Scope of Work shall contain measurable goals and objectives that are linked to the performance measures of the Agency's Strategic Plan:

Example: Goal: Reduce or Increase or Other Service [insert blank].¹

Objective: To reduce or increase or Other Service [insert blank] by [blank] percent or by a certain time.²

Activities: [Insert what services the Contractor is expected to perform to accomplish goals and objectives including an evaluation of the process and the outcome as well as provides efficiency measures that relate efforts to outputs of services].

OR: Through satisfactory completion of Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the Agency to meet the portions of its Strategic Plan set forth below (*insert additional language if necessary to describe how the Contractor's work will assist the Agency to fulfill its duties*).

¹ A goal is an "output" measure. It measures the quantity of a service provided. For example, the number of students graduated or promoted; the number of two-lane highways repaired; or the number of crimes investigated. It also can measure the quantity of a service provided that meets a certain quality requirement. For example, the number of students graduated or promoted who meet a minimum preset level of achievement; the number of miles of roads repaired to a minimum safety standard; or the number of criminal investigations performed that result in identification of a prime suspect.

² An accomplishment is an "outcome" measure. These indicators measure accomplishments or results that occur (at least partially) because the services were provided. For example, the percentage of students achieving a specified skill level in reading, the percentage of miles of roads in excellent, good or fair condition; or the percent reduction in serious crimes or the percent of residents who perceive their neighborhoods as safe.

APPENDIX D
Campaign Contribution Disclosure Form

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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 13-1-182 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 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 of (a) a prospective contractor, if the prospective contractor is a natural

person; or (b) an owner of a prospective contractor.

“**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.

“**Prospective contractor**” means a person or business that 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 or business 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: _____
(Completed by State Agency or Local Public Body)

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) _____

(Attach extra pages if necessary)

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)

Contractor Name

APPENDIX E
New Mexico Employees Health Coverage Form

NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

- A. For all contracts solicited and awarded on or after January 1, 2008: 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 and offer that health insurance to those employees no later than July 1, 2010 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 <http://insurenemexico.state.nm.us/>.
- 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, \$500,000 or \$1,000,000.

Signature of Offeror: _____ Date _____

APPENDIX F
SUSPENSION AND DEBARMENT FORM

SUSPENSION AND DEBARMENT

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: 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; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor’s certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor’s certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

- (1) The Contractor shall provide immediate written notice to the HSD’s Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.
- (2) If it is later determined that the Contractor’s certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the PSC.

C. As required by statute, regulation or requirement of this PSC, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

OFFEROR: _____
SIGNED BY: _____
TITLE: _____ **DATE:** _____