

STATE OF NEW MEXICO
Human Services Department



REQUEST FOR PROPOSALS
RFP# 20-630-00-21113

TEFAP Program
(Temporary Emergency Food Assistance Program)

Issue Date: March 23, 2012

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico's Human Services Department (HSD) is requesting proposals from regional emergency feeding organizations to provide regional administration to receive, store, and deliver United States Department of Agriculture (USDA) commodity foods to local emergency feeding organizations for distribution to eligible households and homeless shelters throughout the state of New Mexico, in compliance with all state and federal regulations and requirements.

B. VISION

The mission of the HSD is to reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance. This RFP will assist the HSD to support this mission by improving the nutritional well-being of low income households.

C. SUMMARY SCOPE OF WORK

The USDA, through Food and Nutrition Services (FNS), administers The Emergency Food Assistance Program (TEFAP). TEFAP is a Federal program that helps supplement the diets of low-income Americans, by providing them with emergency food and nutrition assistance at no cost. Under TEFAP, USDA makes USDA foods available to New Mexico through the HSD, Income Support Division, Food and Nutrition Services Bureau (FANS), the designated State Distributing HSD. The formula used to determine the amount of food that New Mexico receives is based on the number of unemployed persons and the number of people with incomes below the poverty level in the State. New Mexico uses this same formula to determine the fair share of TEFAP for each of New Mexico's counties. FANS approves the allocation of TEFAP food dollars to each Regional Emergency Feeding Organization (REFO) based on the percentage of eligible population residing in the REFO's geographic service region by county. The State Agency contracts with REFOs to receive, store, deliver, and provide the food to local agencies, such as soup kitchens and food pantries that directly serve the public. These local organizations distribute USDA foods to eligible recipients for household consumption, or use them to prepare and serve meals in a congregate setting. Recipients of food for home use must meet income eligibility criteria set by the State Agency. TEFAP Income eligibility is set at 185% or below the poverty level in New Mexico. Income eligibility criteria are updated annually by the State Agency.

Under TEFAP, New Mexico also receives administrative funds to support the storage and distribution of USDA foods. These funds must, in part, be passed down to regional agencies. FANS enter into agreements with REFOs for regional and local level administration of the program. Administrative funds are distributed to each REFO based on the TEFAP formula, for each county served by the REFO. Service areas may not be less than a county.

USDA notifies the state agency when orders are to be placed, the product that is available for ordering and the value of each product. Orders may be placed by the states for monthly delivery. FANS or its designee will order products based on the entitlement allocation of dollars set by USDA and needs of New Mexico's TEFAP-eligible population. USDA/FNS makes every effort to fill orders as requested. Occasionally, due to unforeseen circumstances, USDA/FNS will eliminate or substitute products and/or change delivery times. FANS receives allocation notices from USDA/FNS and establishes ordering deadlines, FANS or its designee will place orders against their TEFAP entitlement dollar fair-share electronically using the **Web Based Supply Chain Management (WBSCM)** ordering system.

FANS enter into a contractual agreement with REFOs for TEFAP local administration. The REFO will incorporate TEFAP commodities into their food banking operations providing an enhanced variety of products available for distribution.

The following criteria are assessed when determining local level administration of the programs:

- Ability to meet USDA food safety and food storage requirements.
- Ability to maintain an established operation involving the distribution of donated food on a regular basis as an integral part of its normal activities.
- Ability to distribute to LEFOs in the service area for USDA foods.
- Ability to consistently obtain non-USDA food items and food resources to supplement USDA food products.
- Ability to monitor local network and enforce state and federal guidelines within the required timeframes.

D. SCOPE OF PROCUREMENT

The scope of procurement shall encompass the defined Scope of Work, detailed in the Sample Professional Services Contract, in Appendix B of this RFP.

The HSD seeks to provide funds to agencies to administer the TEFAP program to eligible entities based on the TEFAP Formula, in the most efficient and cost effective manner. Allowable expenditures are for salaries, benefits, contracts, food, non-capital equipment and supplies, fuel, utilities and maintenance costs. Funds for the TEFAP Program are 100% federal funds. Multiple awards are expected to be made as a result of this RFP.

The HSD reserves the option of renewing the initial contract on an annual basis for three additional years or portion thereof. An award shall be made to the responsible Offeror(s) whose proposal(s) is (are) most advantageous to the HSD, taking into consideration the evaluation factors set forth in the RFP not to exceed four years.

E. PROCUREMENT MANAGER

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

Leslie Baca, Procurement Manager
NM HSD/ISD/Food and Nutrition Services Bureau
1425 William SE/PO Box 26507
Albuquerque, NM 87125/87102-6507
(505)841-2626
Fax: (505)841-2691
E-mail: Leslie.baca@state.nm.us

All deliveries via express carrier should be addressed as follows:

Leslie Baca, Procurement Manager General Services Department
State Purchasing Division
1100 St. Francis Drive, Room 2016
Santa Fe, NM 87505
E-mail: Leslie.baca@state.nm.us

Any inquiries or request 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 Agency.

A copy of the RFP can be viewed on the HSD website at <http://www.hsd.state.nm.us>.

If the person completing the proposal has a disability that requires a reader, amplifier, sign language interpreter, or any other form of auxiliary aid/service to participate in any aspect of this process, they may contact the Procurement Manager listed above at least two weeks prior to the proposal submission deadline. The Relay New Mexico Network can be used to contact the Procurement Manager at the number provided above, by dialing **7-1-1** or by calling one of the toll free numbers below:

TTY: 800-659-8331
Voice: 800-659-1779
VCO (Voice Carry Over): 877-659-4174
Speech-to-Speech: 888-659-3952
Spanish: 800-327-1857 (includes Spanish-to-Spanish and translation from English to Spanish)
http://www.hamiltonrelay.com/state_711_relay/state.html

F. DEFINITION OF TERMINOLOGY

This section contains definitions that may be used throughout this procurement document, including appropriate abbreviations.

“Agency” means the Human Services Department

“**Bill of Lading**” is a document issued by a carrier to a shipper, acknowledging that specified goods have been received on board as cargo for conveyance to a named place for delivery to the consignee who is usually identified.

“**Bonus foods**” are USDA TEFAP donated foods, which are purchased under surplus removal or price support authority, and provided to distributing agencies in addition to legislatively authorized levels of assistance. New Mexico received \$1,764,351 worth of bonus foods in FFY11.

“**Client Choice**” refers to the practice of allowing food pantry clients a choice in determining the content of the food package received at the food pantry. The method of allowing client choice may vary based on product availability and/or limited physical space at the pantry.

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

“**Code of Federal Regulations**” (CFR) are the regulations governing all federal programs, Regulations for TEFAP are located at 7 CFR 250 and 7 CFR 251, as applicable.

“**Commodities**” are the foods donated by USDA for distribution through TEFAP. It is also called USDA Foods.

“**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction derived from an Invitation to Bid (ITB) or RFP.

“**Contract Manager**” means the individual selected by the Agency to monitor and manage all aspects of the contract resulting from this RFP.

“**Contractor**” means an employer contracting with the State of New Mexico, which employer has, had, or anticipates having six (6) or more employees who worked, are working, or are expected to work an average of at least twenty hours per week over a six-month period, with said six month period being at any time during the year prior to seeking the contract(s) with the State, or any time during the term of the contract(s) with the State.

“**Deliverable**” means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

“**Delivery**” means the disbursement of commodities from USDA to an Eligible Recipient Agency (ERA) or from a Regional Emergency Food Organization (REFO) to a Local Emergency Food Organization (LEFO).

“**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 of a 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 Contracts Review Board of the Department of Finance and Administration for the State of New Mexico.

“**Distribution**” means the actual transfer of commodities from a Regional Emergency Food Organization (REFO) to a Local Emergency Food Organization (LEFO).

“**Eligible Recipient Agency**” (ERA) is a public or private entity with tax exempt status, non-penal, that provides food assistance exclusively to needy persons for household consumption and/or predominantly to needy persons in the form of prepared meals and has entered into an agreement with the State Agency or another ERA for the receipt of commodities and/or administrative funds.

“**Emergency Feeding Organization (LOCAL)**” – LEFO is a not-for-profit food bank, pantry or shelter that contracts with a Regional Emergency Feeding Organization (REFO) to distribute TEFAP commodities in an assigned service area.

“**Emergency Feeding Organization (REGIONAL)**” – REFO is a not-for-profit food bank that has an agreement with the FANS Bureau to administer TEFAP in an assigned service region no smaller than an established geographical county and may receive commodities directly from USDA.

“**Employer**” means any for-profit or not-for-profit business, regardless of location, that employs one or more persons that qualify as a “New Mexico Employee”. (See below.) Such definition does not include governmental entities.

“**Entitlement**” means the value of donated foods a distributing agency is authorized to receive in a specific program, in accordance with program legislation. New Mexico TEFAP received \$1,512,027 in entitlement in FFY11.

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

“**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee for submission to the State Purchasing Agent for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

“**Farm Service Agency**” – FSA The Farm Service Agency implements agricultural policy, administers credit and loan programs, and manages conservation, commodity, disaster and farm marketing programs through a national network of offices.

“Federal Fiscal Year” (FFY) The twelve-month period, from October 1 through September 30, used by the federal government for accounting and reporting purposes.

“Finalist” is defined as an offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Evaluation Committee.

“Fiscal Year” (FY) The twelve-month period , from July 1 through June 30, used by the State of New Mexico for accounting and reporting purposes.

“Food and Nutrition Service” (FNS) is the agency of USDA responsible for the nationwide administration of several federal nutrition programs including TEFAP.

“Food and Nutrition Services Bureau” (FANS) The Bureau within New Mexico’s Human Services Department, Income Support Division responsible for administering TEFAP through a permanent agreement with USDA. May also be referred to as the State Distributing Agency (SDA) or State Agency (SA).

“Food Bank” is a nonprofit, charitable organization qualified under provision of Section 501(c) 3 of the Internal Revenue Code of 1986. The organization maintains an established operation involving the provision of food and grocery products to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers. As an integral part of their normal activities, they provide meals or food to feed needy persons on a regular basis.

“Food Pantry” is a public or private nonprofit organization that is part of the food bank network that distributes food and grocery products to low-income households, including food from sources other than USDA, to relieve situations of emergency and distress. A Food Pantry is housed in a standing facility that distributes commodities, among other food and grocery products, on a regular basis.

“Formula” means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State’s population of low-income and unemployed persons, as compared to national statistics. Each State’s share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities will be allocated to States on the basis of their weight (pounds), and the commodities purchased under section 214 of the Emergency Food Assistance Act of 1983 will be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same formula used for the initial allocation.

“Homeless Shelter” is a facility where the primary purpose is to provide temporary or transitional shelter for homeless individuals and families in general or for specific group populations (i.e. battered women, run-away youth) of homeless individuals and families.

“Household” is composed of an individual or a group of individuals who purchase and prepare meals together for home consumption. The individuals may be related or non-related individuals living as one economic unit. It can also mean a single individual living alone.

“HSD” is the Human Services Department.

“Income Support Division” (ISD) is a division of the New Mexico Human Services Department that also oversees Child Support, Medical Assistance and Behavioral Health.

“Mandatory” The terms “must,” “shall,” “will,” “is 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.

“Milestone” means a significant event in a project, usually the completion of a major deliverable.

“Network” means member agencies of a regional emergency food organization that are responsible for the provision of emergency and supplemental food services.

“New Mexico Employee” means any resident of the State of New Mexico, performing the majority of their work within the State of New Mexico, for any employer regardless of the location of the employer’s office or offices.

“Offer” means to make available to all New Mexico employees, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of the Executive Order. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

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

“Poverty Guidelines” are guidelines established by the United States Department of Health and Human Services (DHHS) as an indicator of poverty based on income and utilized in establishing income-based eligibility standards for program participants. The guidelines are updated annually.

“Procurement Manager” means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

“Recipient” is a person or persons living together in one household who have been determined eligible to receive commodities for consumption or for household use.

“Regional Service Area” is a specified region of the state identified as no smaller than a recognized state county. It may be larger than one county. The Food and Nutrition Services Bureau (FANS) approves the service area of a Regional Emergency Food Organization (REFO).

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

“Requirements” are obligatory and mean the system functions that are related to the organization’s goals and business opportunities. Requirements are defined by the project team and are usually prioritized.

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

“Responsible Offeror” means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its 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.

“Solicited and Awarded” means an ITB or RFP was made available to the general public, through any means, after January 1, 2008 AND the contract(s) sought as a result of that solicitation was/were awarded after January 1, 2008.

“Solicitations” means ITBs and RFPs.

“Soup Kitchen” is a facility that is a clean, secure environment offering prepared meals free of charge to predominately-needy people. A Soup Kitchen serves nutritious meals in a congregate setting or may provide take-home meals at no charge, for homeless persons, transient persons and others in need.

“Southwest Regional Office (SWRO)” is the USDA/FNS Southwest (SW) Region, headquartered in Dallas, Texas, responsible for USDA programs in New Mexico, Arkansas, Louisiana, Oklahoma and Texas.

“State (the State)” means the State of New Mexico.

“State Purchasing Agent” or “SPA” means the purchasing agent for the State of New Mexico or a designated representative.

“Storage” means the holding of commodities for a period of time longer than twelve hours.

“Sub-Distributing Agency” is an ERA or REFO that has entered into an agreement with HSD/FANS to accept, store and distribute TEFAP foods donated by the USDA in accordance with Federal laws and regulations pertaining thereto. The ERA or REFO agrees to comply with all Federal and State laws and regulations now in effect or hereafter enacted in connection with the receipt, use, storage, handling and distribution of such TEFAP foods, and as otherwise relates to this TEFAP Program.

“USDA” means the United States Department of Agriculture.

“Web Based Supply Chain Management (WBSCM)” An on-line ordering system developed and maintained by USDA for the placement, tracking and delivery of commodity orders for the nutrition assistance programs.

G. BACKGROUND INFORMATION

The HSD manages state and federal funds that provide life’s most basic services to many New Mexican individuals and families – touching the lives of more than one in three New Mexicans with food, access to health care, income, work, energy assistance and community services. HSD is the fifth largest state agency with 1,700 employees in 53 office locations statewide. The Department is organized into nine areas led and directed by the Office of the Secretary (OOS): Office of General Counsel (OGC); Behavioral Health Services Division (BHSD); Child Support Enforcement Division (CSED); Income Support Division (ISD); Medical Assistance Division (MAD); Information Technology Division (ITD); and the Administrative Services Division (ASD), which provides finance, accounting and property management support for HSD, the Office of Human Resources (OHR), and the Office of Inspector General (OIG) which provides audit, investigations, restitution services and fair hearings for the HSD.

At the core of HSD’s mission is its commitment to reduce the impact of poverty on children, families and the state as a whole. To this end, HSD continues to partner with other public and private agencies to reach goals that reflect the commitment to provide the best service possible to clients through access, quality and accountability.

New Mexico’s Human Services Strategic Plan contains five goals and related tasks aimed at reducing the impact of poverty on families. The purpose of Goal 2, *Helping New Mexicans Get Back to Work*, is to assist eligible low-income families through cash assistance, food assistance, medical assistance, energy assistance and supportive services so they can achieve self-sufficiency.

H. PROCUREMENT LIBRARY

The State Purchasing Agent has established an Internet Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

REQUEST FOR PROPOSALS
SPD RFP
TEFAP PROGRAM

New Mexico State Purchasing Division includes links to Procurement Regulations and Request for Proposal – RFP instructions: <http://www.generalservices.state.nm.us/spd/>

The Emergency Food Assistance Program (TEFAP) is a federally funded food distribution program administered through the United States Department of Agriculture's Food and Nutrition Service (USDA/FNS). TEFAP Program regulations are available at <http://www.fns.usda.gov/fdd/programs/tefap/>.

In New Mexico, the Human Services Department (HSD), Income Support Division (ISD), Food and Nutrition Services Bureau (FANS) is the designated state agency responsible for program administration. Visit the New Mexico Human Services Department webpage <http://www.hsd.state.nm.us/isd/tefap.html> for more information.

USDA link to Nutrition Assistance Programs (Non-Governmental):
http://fnic.nal.usda.gov/nal_display/index.php?info_center=4&tax_level=3&tax_subject=276&topic_id=1343&level3_id=5157.

Waste Not, Want Not: Feeding the Hungry and Reducing Solid Waste Through Food Recovery: http://www.epa.gov/osw/consERVE/materials/organics/pubs/wast_not.pdf.

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	Agency State Purchasing	3/23/12
2.	Distribution List Response	Potential Offerors	3/28/12
3.	Pre-Proposal Conference	Agency Potential Offerors	3/28/12
4.	Deadline To Submit Additional Questions	Potential Offerors	4/04/12
5.	Response to Written Questions/RFP Amendments	Agency	4/11/12
6.	Submission of Proposal	Offerors	4/24/12
7.	Proposal Evaluation	Evaluation Committee	4/24/12- 4/27/12
8.	Selection of Finalists	Evaluation Committee	4/30/12
9.	Finalize Contract	Agency Offeror	5/8/12
10.	Contract Award	State Purchasing Agent	<i>When Signed by SPD</i>
11.	Contract Effective Date	Agency	7/1/12
12.	Protest Deadline	Offerors	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 Agency and the State Purchasing Division of the General Services Department.

Additional copies of the RFP can be obtained from the Purchasing Division web site at www.generalservices.state.nm.us/spd, or at the Human Services Department website at www.hsd.state.nm.us.

2. Distribution List Response

Potential offerors should hand deliver or return by facsimile or by registered or certified mail the “Acknowledgement of Receipt of Request for Proposals Form” that accompanies this document (See Appendix A) to have their organization placed on the procurement distribution list. This form should be signed by an authorized representative of the organization, dated, and returned by close of business on the date described in Sec. II, A.; to the procurement manager.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror’s organization name shall not appear on the distribution

3. Pre-Proposal Conference

The Pre-Proposal Conference will be held at the State of New Mexico Human Services, Income Support Division, Food and Nutrition Services Bureau Conference Room on March 28, 2012 from 10:00 a.m. to 12:00 noon. Food and Nutrition Services is located at 1425 William, SE, Albuquerque, New Mexico.

4. Deadline to Submit Additional Questions

Potential offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on the date described in Sec. II, A. All written questions must be addressed to the Procurement Manager (see Section I, Paragraph E).

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on the date described in Sec. II, A. to all potential offerors whose organization name appears on the procurement distribution list. An Acknowledgement of Receipt Form will accompany the distribution package. The form should be signed by the offeror’s representative, dated, and hand-delivered or returned by facsimile or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the offeror’s organization name shall be deleted from the procurement distribution list.

Additional written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than seven (7) days after the answers and/or amendments were issued.

6. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2 P.M. MOUNTAIN TIME ON THE DATE DESCRIBED IN SEC. II, A. Proposals received after this deadline will not be accepted. 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 E. Proposals must be sealed and labeled on the outside of the package to clearly indicate a response to the “*Homeless Meals Program*” Request for Proposals. Proposals submitted by facsimile will not be accepted.

A public log will be kept of the names of all offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing offerors prior to contract award.

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Agency management. The evaluation process will take place on the dates described in Sec. II, A. During this time, the Procurement Manager may, at his/her option, initiate discussion 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.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist offerors on the date described in Sec. II, A. Only finalists will be invited to participate in the subsequent steps of the procurement.

9. Finalize Contract

The contract will be finalized with the most advantageous Offeror(s) by the date described in Sec. II, A. 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 or to cancel the award.

10. Contract Award

After review of the Evaluation Committee Report, the recommendation of the Agency management, and the signed contract, the State Purchasing Agent will award the contract(s) on the date described in Sec. II, A. This date is subject to change at the discretion of the State Purchasing Agent.

This contract shall be awarded to the Offeror(s) 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.

11. Contract Effective Date

The anticipated contract start date, after negotiations, appropriate State reviews and approvals, is **July 1, 2012**. The contract is subject to the appropriate state approvals. No work may be performed by the Offeror until the contract is fully executed. The Agency assumes no liability for any work performed by the selected Offeror in anticipation of a binding contract prior to the approval date from the DFA.

12. Protest Deadline

Any protest by an offeror must be timely and in conformance with §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 and will end as of 5:00 PM Mountain Time 15 days after 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 State Purchasing Agent.

Lawrence Maxwell
State Purchasing Agent
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Santa Fe, New Mexico 87505

Mailing Address: P.O. Drawer 26110
Santa Fe, NM 87502-0110

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 code 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.

Any cost incurred by the offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the offeror.

3. Prime Contractor Responsibility

Any contract that may result from the RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Agency. The Agency will make contract payments only to 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 Agency personnel will not merge, collage, 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 one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) 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 inspections of the non-confidential portion of the proposal. Confidential data are normally restricted to confidential financial information concerning the offeror’s organization and data that qualify 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 State 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

The procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is awarded and approved by appropriate authorities (including the DoIT, State Purchasing Division, DFA/CRB and Federal 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 the 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 Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The Agency requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror 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 should be used as the basis for the preparation of offeror proposals.

15. Contract Terms and Conditions

The contract between the Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in Appendix B, "Sample Professional Services Contract." However, the Agency reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into and become part of the contract.

Should an offeror object to any of the Agency's terms and conditions, as contained in Appendix B, that offeror must propose specific alternative language. The Agency may or may not accept the alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the offeror's proposal.

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

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the agency.

17. Contract Deviations

Any additional terms and conditions that may be the subject of negotiation will be discussed only between the Agency 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 §13-1-83 and §13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

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

21. Notice

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

22. Agency Rights

The Agency reserves the right to accept all or a portion of an offeror's proposal including the right to purchase software or services from SPA approved price agreements.

23. 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.

24. Ownership of Proposals

All documents submitted in response to the RFP will become the property of the Agency and the State of New Mexico.

25. Confidentiality

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

The Contractor(s) 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.

26. Electronic Mail Address Required

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

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 insure 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 SPA, the version maintained by the SPA shall govern.

28. New Mexico Employees Health Coverage

- 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:
 - 1) 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, 2008 if the expected annual value in the

aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

- 2) 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, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;
 - 3) 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.

29. Campaign Contribution 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 your proposal whether an applicable contribution has been made or not. (For purposes of this requirement, the applicable elected public officials within the Executive Branch are Governor Susana Martinez and Lt. Governor John Sanchez.)

30. Pay Equity Initiative

For all contracts solicited on or after July 1, 2010 and before October 1, 2010: If the offeror has ten (10) or more employees OR eight (8) or more employees in the same job

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classification, offeror must agree to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) within thirty (30) calendar days of contract award.

“For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, offeror must also agree to complete and submit the required reporting form annually within thirty (30) calendar days of the annual contract anniversary date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

“Should offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

“Offeror must also agree to levy these reporting requirements 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. Offeror must further agree 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, offeror will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.”

III. RESPONSE FORMAT AND ORGANIZATION

A. **NUMBER OF RESPONSES**

Offerors shall submit only one proposal.

B. **NUMBER OF COPIES**

Offerors shall provide 1 original, 3 identical copies of their proposal (Binder 1), 1 original, 2 copies of the cost proposal (Binder 2), and 1 original, 3 copies of supporting documentation (Binder 3) to the location specified in Section I, Paragraph E on or before the closing date and time for receipt of proposals.

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 binders with tabs delineating each section.

1. **Proposal Organization**

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

Binder #1

- a) Letter of transmittal
- b) Table of contents
- c) Summary of proposed services
- d) Response to mandatory specifications

Binder #2

- a) Response to GCD Terms and Conditions
- b) Offeror's Additional Terms and Conditions
- c) Budget Proposal Form
- d) Campaign Contribution Form
- e) Employee Health Coverage Form

Binder #3 (Optional)

- a) 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.

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

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

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, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
 - c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
 - d. Identify the names, titles, telephone and fax numbers, and e-mail addresses 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

A. MANDATORY SPECIFICATIONS

Federal and State Requirements

1. Cost Proposal

Describe the matching funds (cash or in-kind) and the proposed expenditures identified in the Cost Response Form, found in Appendix C.

2. Campaign Contribution Form

Offerors must submit a completed Campaign Contribution form as found in Appendix D of this RFP.

2. Pay Equity Initiative

As defined in Section II.C.30, of this proposal; Offerors must agree to meet the requirement.

A statement of concurrence must be included in Offerors response to this RFP.

3. Employee Health Coverage Form

Offerors must submit a completed New Mexico Employees Health Coverage Form as found in Appendix E of this RFP.

5. Federal Tax Exempt Status

The Offeror shall include proof of current federal tax exempt status [501 (c) 3] designation with the most recently filed IRS Form 990.

B. DESIRABLE SPECIFICATIONS

1. Organizational Experience

Offerors should submit a statement of relevant organizational experience within the last five (5) years. The narrative in response to this factor should thoroughly describe the Offeror's experience with food warehousing, donated foods, distribution networks, food safety compliance and work with limited resource populations.

In this section, the Offeror should provide the following information (referencing the subsections in sequence) to evidence the Offeror's experience in delivering services such as those sought under this RFP:

- a. A brief statement and documentation of how long the Offeror has been performing the services sought under this RFP. This statement should also include and describe the extent of their experience and expertise as a provider of food to needy households.
- b. A description of the experience level and government experience of the organization resources that may be used for the contract.
- c. A description of the extent of the Offeror's knowledge and experience with warehousing, inventory control, receiving, storage, and distribution of USDA donated foods.

2. Organization References

Offerors should submit four (4) external references; two (2) from local emergency feeding agencies and two (2) from companies that have collaborated with the Offeror to provide similar services or contribute resources for such services within the past five (5) years. Each reference should include:

- a. the name of the company or agency,
- b. company or agency current address,
- c. name of the contact person,
- d. telephone number of contact person, and
- e. description of collaboration.

Note: The Offeror is responsible for verifying contact information for references. The Evaluation Committee is not obligated to try to locate persons not found at the numbers or places given in the proposals. Obsolete or wrong contact information for references could result in a zero score in this category.

3. Financial and Corporate Stability of Offeror

- a. Offerors should submit complete copies of their organization's most recent years audit report, as well as those for the preceding two (2) years. The submissions should include the audit opinion, the balance sheet, statements of income, retained earnings, cash flows, management letters and the notes to the financial statements. If independently audited financial statements do not exist for the Offeror, the Offeror should state the reason and instead submit sufficient information to enable the Evaluation Committee to determine the financial stability of the Offeror.
- b. Offerors should also submit information regarding any mergers, acquisitions, or sales of the Offeror or subcontracting companies within the last ten years, or if any are pending or being negotiated and if so, an explanation providing relevant details.

- c. Offerors should provide a statement as to whether there is any pending litigation against the Offeror, and if such litigation exists, attach an opinion of counsel as to whether the pending litigation may impair the offeror's performance in a contract under this RFP. Likewise, offerors must provide a statement as to whether the Offeror or any of the Offeror's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled *nolo contendere* to any felony, and if so provide an explanation with relevant details.
- d. Offerors should include a statement of their intention and evidence of ability to procure, submit to the Department, and maintain throughout the duration of the contract, a blanket Fidelity Bond in favor of the HSD to insure the Contractor's performance under the contract. The Contractor shall obtain and maintain at all times during the term of the Agreement a blanket Fidelity Bond covering the activities of the Contractor in an amount of at least 25% of the total dollar amount of this contract budget incorporated herein. It is suggested that the Contractor obtain a bond that covers 25% of the total agency budget/funding.

4. Offeror Staff Experience

The Offeror should provide a description of the qualifications of key organizational staff and any subcontractors, including CEO or executive director, fiscal manager, operational staff, and all personnel required to complete the Contractor responsibilities described in this RFP in the Sample Professional Services Contract, in Appendix B. The Contractor is not to assume or propose the use of State staff to conduct any work pursuant to this RFP.

The Proposal should describe any experiences of the proposed core team relevant to any projects of the type, size, and scope of this project. Special attention should be given to experience related to providing donated food to low-income households and shelters and relevant experience with volunteers and training. The most recent relevant experience for proposed staff members should be within the last two years of the date of this RFP.

In addition, offerors should submit resumes for senior organizational management proposed to be responsible for the Contractor's performance, and empowered by the Contractor to legally bind the Contractor on a contract.

5. Project Plan

Offerors should submit a plan as part of the proposal that includes the following:

- a. Demonstrates needs assessment of target population in a defined service area. Offeror must explain extent of need in service area and how Offeror's program addresses this need.

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- b. Demonstrates coordination and collaboration: the plan should identify Offeror's coordination and collaboration efforts to address the issue of hunger in their service county(ies), including partner organizations and initiatives that contribute donated food or monetary resources to supplement TEFAP food boxes.
- c. Budget: Evaluation of the budget as it pertains to Offeror's Plan.
- d. Staffing: Costs associated with employment of staff for program administration.

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. Only finalist offerors will receive points for an oral presentation and demonstration.

Factor	Points Available
Mandatory Specifications	
Federal and State Requirements	Pass/Fail
1. Cost Proposal	Pass/Fail
2. Campaign Contribution	Pass/Fail
3. Pay Equity Initiative	Pass/Fail
4. New Mexico Employee Health Coverage	Pass/Fail
5. Federal Tax Status	Pass/Fail
Desirable Specifications	
1. Organizational Experience	200
2. Organization References	100
3. Financial and Corporate Stability of Offeror	100
4. Offeror Staff Experience	100
5. Project Plan	
A. Demonstrates needs assessment of target population	50
B. Demonstrates coordination and collaboration	200
C. Budget	100
D. Staffing	150
Total	1000

B. EVALUATION FACTORS

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

C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response as specified in Section II, B.7.

3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible offerors whose proposal are most advantageous to the Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract awards. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A
REQUEST FOR PROPOSALS
ACKNOWLEDGEMENT OF RECEIPT FORM

REQUEST FOR PROPOSALS
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 E.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on March 26, 2012. Only potential offerors who elect to return this form completed with the 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.

FIRM: _____

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.

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

Leslie Baca, Procurement Manager
NM HSD/ISD/Food and Nutrition Services Bureau
1425 William SE/PO Box 26507
Albuquerque, NM 87125/87102-6507
(505)841-2626
Fax: (505)841-2691
Leslie.baca@state.nm.us

APPENDIX B
SAMPLE PROFESSIONAL SERVICES CONTRACT

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

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.

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(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

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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

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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

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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.

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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

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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.

29. 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."

30. 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;

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(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.

31. 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.

32. 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:

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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.

33. 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. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.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

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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.

D. 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.

34. 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.

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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 New Mexico State Purchasing Agent:

By: _____ Date: _____
State Purchasing Agent

EXHIBIT A
SCOPE OF WORK

The Contractor shall:

- A. Be responsible for the distribution of Commodities and be authorized to sign all documents necessary in the operation of the sub-distribution program.
- B. Physically distribute Commodities only to those emergency feeding organizations, herein referred to as “EFOs,” eligible to receive them.
- C. Accept and distribute the Commodities in the manner directed by and in quantities specified by the Distributing Agency as evidenced in the list furnished by the Distributing Agency.
- D. Furnish proper facilities and adequate personnel to receive, handle, store, and deliver the Commodities in accordance with instructions issued by the Distributing Agency.
- E. Store Commodities in a manner that permits them to be distinguished from non-commodity donated or commercially purchased foods, in order to ensure compliance with the requirement for the distribution and control of commodity donated foods.
- F. Obtain true and accurate receipts pertaining to the distribution of the Commodities on forms as directed by the Distributing Agency. The original distribution sheet shall be forwarded to the Distributing Agency as soon as it has been completed. The copy will be completed and retained in the files of the Contractor.
- G. Not assess a fee or levy an assessment against individual EFOs to cover unloading charges, storage costs or for other expenditures relating to the distribution of food Commodities.
- H. Assume full responsibilities for carrying out the terms and conditions of this agreement and instructions of the Distributing Agency and will reimburse the Distributing Agency for any loss, spoilage, improper distribution, or misappropriation of foods provided, unless said loss or spoilage is due to neglect on part of the Distributing Agency or their employees in providing proper storage, care, or handling. If Commodities are lost or damaged while in the hands of a warehousemen, carrier, or other person to the account of the ERA, he shall take prompt action necessary to obtain restitution.
- I. Maintain and retain records in connection with the program for a period of not less than three (3) years beyond the federal fiscal year to which they pertain.
- J. Furnish any required reports to the Distributing Agency upon request.

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- K. Allow a representative of the Distributing Agency and the United States Department of Agriculture access, at any reasonable time, to the Commodities in storage or of the facilities or warehouse used in the handling of storage of Commodities or of any records maintained by the Contractor pertaining to distribution of Commodities.
- L. Arrange for inspection of damaged or out-of-condition Commodities by a competent local or state health authority or authorized designee. Copies of any or all condemnation reports will be promptly furnished to the Distributing Agency.

APPENDIX C
COST RESPONSE FORM

OBJECT CODE	DESCRIPTION	BUDGET AMOUNT
	Salary/Benefits	
	Contracts/Grants/Agreements	
	Food	
	Non-Capital Equipment/Supplies	
	Fuel	
	Building/Space (includes utilities)	
	Maintenance	
	TOTAL BUDGET	

APPENDIX D
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person 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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract 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.

THIS FORM 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 federal, statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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“**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.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

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)

APPENDIX E
NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

New Mexico Employees Health Coverage Form

1. 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:
 - (a) 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, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;
 - (b) 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, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or
 - (c) 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.
2. 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.
3. 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/>.
4. 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 _____