

STATE OF NEW MEXICO
New Mexico Human Services Department
Income Support Division



REQUEST FOR PROPOSALS
RFP# 20-630-00-21247

Correspondence Management and Batch Mailing Services

Issue Date: June 8, 2012

Proposal Due Date: July 10, 2012

HSD RFP# 12-630-9000-0015

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Human Services Department, Income Support Division (HSD/ISD) is requesting proposals for an experienced, local vendor that can electronically assemble, print, insert and mail client correspondence of more than 300 separate types of notices that are compiled from up to four different data sources in a single document in both Spanish and English in quantities up to 20,000 pieces a day and 220,000 pieces a month in a timely, accurate manner.

B. VISION

The Income Support Division serves one in four New Mexicans, providing critical assistance to those most in need within very tight timelines. A large part of the interaction between the citizens of New Mexico and the Division is done via the United State Postal Service in the form of written communications including approval of benefits, denial of benefits, updates to coverage and requests for face to face meetings. The accuracy, timeliness and consistency of these notices are a vital component of the success of the programs administered by the Division. The agency envisions a transition from the current processing of this client correspondence from the current operation to a newly awarded vendor that will occur without delays in notices reaching the clients and a high degree of accuracy on all pieces in the most cost-effective manner available.

C. SUMMARY SCOPE OF WORK

The successfully awarded vendor will perform the following four major tasks:

Electronically assemble, including concatenation of all notices to one address, through their own computer application a merging of the various components that make up one of the 300 possible client notice types. This includes template files of the basic content of the notice in English and Spanish, a table of possible reason codes with associated definitions, and NM statutes and rules that may or may not be referenced. The merging of the various data into the template is done by means of a 'symbolic' value in the template including the actual client-specific data from a flat file that is related to the notice being sent (i.e. name, address, SSN, benefit amount, dependents, etc.). Translations must occur from English to Spanish for date formats.

Make changes and additions to any of the existing forms as well as integrate new forms into the process in a timely and accurate manner – often the same day as requested. This includes participating in project meetings, providing tests and samples of created notices and providing timely accurate feedback associated with any problems in the modifications and additions. This also includes having the capability to test any changes prior to going into production.

Attach pre-printed forms, flyers, etc. provided by agency with various types of mail outs as instructed.

Print, sort, fold, stuff and bulk mail notices along with any agency provided attachments through USPS within timeframes required by agency.

It should be noted that, as HSD/ISD is currently updating their eligibility system from ISD2 to the Automated System Program and Eligibility Network (ASPEN) system, the services required in this RFP will be phased out by January of 2014. The ASPEN system will replace the current ISD2 legacy system and the services being procured through this RFP will gradually decline as the ASPEN project rolls out and eventually fully transitions. The new eligibility system will begin generating notices during the pilot phase in July of 2013. After the pilot phase there will be three (3) waves of transition to the ASPEN system in which the workload generated from ISD2 will be reduced and the work load from ASPEN will increase. Approximately one third of the Income Support Divisions outgoing mail will transition to ASPEN in each wave of the rollout until full implementation in January 2014. Each step in the rollout will mean a gradual decline in the volume of work required for the scope of work in this RFP.

D. SCOPE OF PROCUREMENT

The scope of procurement encompasses the processing, electronic assembling, printing and mailing of various written communications between the NMHSD/ISD and their clients.

The initial contract shall begin on the date of award, as indicated in Section II.A “Sequence of Events”, or as soon as possible thereafter, for a term of one (1) year. The contract may be amended by mutual agreement of the parties upon written notice by either party to the other. HSD reserves the option to renew the initial contract on an annual basis, or any part thereof, for up to three (3) additional one (1) year terms or any portion thereof. In no case will this contract, including all renewals thereof, exceed a total of four (4) years in duration. After the initial term, the rates cannot increase more than a total of 5% for the duration of the contract, including all renewals/amendments and adjustments. All renewals/amendments and adjustments must be approved by NMHSD/ISD and the State Purchasing Agent. This procurement will result in a single source award.

E. PROCUREMENT MANAGER

Offeror **PROPOSAL** shall be addressed and delivered as follows:

Jeff Barela
Procurement Manager
Correspondence Management and Batch Mailing RFP – Legacy Sys
Purchasing Division, General Services Department
Joseph M. Montoya State Office Building, Room 2016
1100 St. Francis Drive
Santa Fe, NM 87505
Telephone: (505) 827-6244
Fax: (505) 827-7259
Email: jeff.barela@state.nm.us

ALL OTHER CORRESPONDENCE via US Mail, facsimile, or express carrier shall be addressed as follows:

Jeff Barela, Management Analyst
New Mexico Human Services Department
Income Support Division-Program Administration Bureau
Pollon Plaza

2009 South Pacheco St.
Santa Fe, NM 87504-2348
Telephone: (505) 827-6244
Fax: (505) 827-7259
Email: jeff.barela@state.nm.us

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

F. DEFINITION OF TERMINOLOGY

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

“Agency” means the New Mexico Human Services Department

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

“Contract” means any agreement for the procurement of items of tangible personal property, services or construction derived from an 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.

“Department of Information Technology” or “DoIT” means the New Mexico Department of Information Technology which is responsible for operating the data center and all communications related items.

“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.

“Division” means the Income Support Division of the New Mexico Human Services Department.

“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.

“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.

“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.

“ITD” is the Information Technology Division of the New Mexico Human Services Department.

“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.

“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.

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

“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 his financial resources production, or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

“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.

“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.

G. BACKGROUND INFORMATION

This section provides background on the Human Services Department, the Income Support Division, and the operating environment of the Procuring Agency which may be helpful to the Offeror in preparing the proposal. The information is provided as an overview and is not intended to be a complete and exhaustive description.

The following information regarding HSD’s mission and goals is a reiteration of published data at <http://www.hsd.state.nm.us/>.

HSD Mission

The mission of the Human Services Department 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.

HSD Goals and Values

The HSD goals reflect the Secretary’s commitment to providing the best service possible to our clients.

Goal 1: Modernizing and Improving New Mexico’s Medical Assistance Programs

- Modernizing the Medicaid Program
- Operate the Medicaid program within budget constraints
- Adopting and using health information technology
- Prepare for and help implement health reforms in the Patient Protection and Affordable Care Act (PPACA and other federal and state legislation and regulation
- Combat health care fraud, waste and abuse and improving program integrity

Goal 2: Helping New Mexicans get back to work

- Increase the number of TANF participants engaged in work activities
- Provide food for seniors, low-income families and disabled individuals
- ISD2 Replacement
- Expand the Public Assistance Reporting Information System (PARIS) as a Cost Avoidance Measure
- Increase administrative efficiencies for determining participant application and eligibility process

Goal 3: Assisting Parents with their Child Support Responsibilities Child Support Bench Warrant Project

- Administrative improvement of CSED functions in an effort to improve collections and obligated case percentage.

Goal 4: Improve Behavioral Health

- Create a trauma informed system of care
- Align New Mexico’s behavioral health system within the changing healthcare environment.
- Reduce suicide among young and high-risk individuals including older adults and returning veterans
- Reduce adverse impacts of substance abuse and mental illness on individuals, families and communities.

Goal 5: Improve Administrative Effectiveness and Simplicity

- ISD2 System Replacement, Automated System for Program Eligibility Network (APSEN)
- Upgrade, replace and/or move IT systems for improved simplicity and better efficiencies
- Improve management structure and processes to ensure compliance with federal, state and other applicable laws and regulations

H. 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:

ISD State Plans:

<http://www.hsd.state.nm.us/isd/ISDPlans.html>

ISD Policy and Procedural Information:

<http://www.hsd.state.nm.us/isd/registers/PolicyProceduralInfo.html>

ISD Monthly Statistical Reports:

<http://www.hsd.state.nm.us/isd/reports.html>

Procurement Code Regulations, 1.4.1NMAC:

<http://www.generalservices.state.nm.us/spd/pregulations.html>

Executive Order 2009-049 and Equity reporting Forms:

http://www.generalservices.state.nm.us/spd/pay_e.html

DoIT Standards and Procedures:

<http://www.DoIT.state.nm.us/standards.html>

New Mexico Administrative Code:

http://www.nmcpr.state.nm.us/nmac/_title08/title08.htm

http://www.nmcpr.state.nm.us/NMAC/_title08/T08C100.htm

http://www.nmcpr.state.nm.us/NMAC/_title08/T08C102.htm

http://www.nmcpr.state.nm.us/NMAC/_title08/T08C106.htm

http://www.nmcpr.state.nm.us/NMAC/_title08/T08C119.htm

http://www.nmcpr.state.nm.us/NMAC/_title08/T08C139.htm

New Mexico Statutes and Rules:

http://www.nmcpr.state.nm.us/NMAC/_title08/T08C150.htm

<http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>

State Records Center and Archives:

<http://www.nmcpr.state.nm.us/>

Links to Electronic version of :

File Layouts

Monthly Translations

PDF File Layouts

Symbolic Substitutions

All Notices Combined

Sample Flyer

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:

	Action	Responsibility	Date
1.	Issue of RFP	Agency State Purchasing	6/8/2012
2.	Distribution List Response	Potential Offerors	6/15/2012
3.	Deadline To Submit Additional Questions	Potential Offerors	6/15/2012
4.	Response to Written Questions/RFP Amendments	Agency	6/22/2012
5.	Submission of Proposal	Offerors	7/10/2012
6.	Proposal Evaluation	Evaluation Committee	7/10-16/2012
7.	Selection of Finalists	Evaluation Committee	7/17/2012
8.	Best and Final Offers Solicited	Offeror(s)	7/20/2012
9.	Finalize Contract	Agency Offeror	7/25/2012
10.	Contract Award	State Purchasing Agent	7/31/2012
11.	Protest Deadline	Offerors	15 Days after the Contract Award

*Dates subject to change based on number of responses to evaluate.

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.state.nm.us/spd.

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 list.

3. 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).

4. 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.

5. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 PM 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 "Correspondence Management and Batch Mailing Services" 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.

6. 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 date described in Sec. II, A. During

this time, the Procurement Manager may, at his 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.

7. Selection of Finalists

The Evaluation Committee will select and Procurement Manager will notify the finalist offerors on the date indicated in the Sequence of Events. Only finalists will be invited to participate in the subsequent steps of the procurement.

8. Best and Final Offers From Finalists

Finalist offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers on the date specified in the Sequence of Events.

9. Finalize Contract

The contract will be finalized with the most advantageous offeror 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 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 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. 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 Daylight Time 15 calendar 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 received by the State Purchasing Agent at the following address and must be postmarked by the date indicated above:

**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, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for 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 if 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 at a minimum contain the terms and conditions set forth in Appendix B, "Agreement Terms and Conditions." 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

The Offeror must agree with the terms and submit a signed New Mexico Employees Health Coverage Form with the submittal of their proposal. (See Section 3. Appendix C, page 32)

29. Campaign Contribution Form

Offeror must complete and sign the Appendix B, Campaign Contribution Disclosure Form – whether any applicable contribution has been made or not. This form must be submitted with offeror's proposal whether any 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

If the offeror has ten (10) or more employees OR eight (8) or more employees in the same job 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, offeror 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.”

31. New Mexico Business Preference

As a desirable specification of this RFP, Offerors will be awarded points if their principle place of business is in the State of New Mexico as defined Section 13-1-22 NMSA 1978. To be awarded the points, Offerors must include a copy of their preference certificate as noted in Section IIID of this RFP. Five percent (5%) of total evaluation points will be awarded as part of Factor III: Cost Proposal Budget.”

As of October 5, 2011, applications for in-state preference will no longer be processed through the State Purchasing Division. Per Senate Bill 1, 2011 N.M. Laws 3 signed by Governor Martinez on October 5, 2011, all resident businesses and contractors will have to obtain a new preference number with the NM Department of Taxation and Revenue. Please note that all current preference numbers were effective through December 31, 2011.

For additional information, please call 505-827-0951.

<http://www.generalservices.state.nm.us/statepurchasing/>

<http://www.nmlegis.gov/Sessions/11%20Special/final/SB0001.pdf>

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors shall provide one (1) original and five (5) identical copies of Binder #1 of the proposal, one (1) original and two (2) identical copy of Binder #2 of the proposal, and one (1) original and one (1) identical copy of Binder #3 of the proposal 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 in 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
- e) Response to GCD Terms and Conditions

Binder#2

- f) Offeror's Additional Terms and Conditions
- g) Cost Proposal Form
- h) Campaign Contribution Form
- i) Employee Health Coverage Form

Binder #3 (optional)

- j) 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 technical and business features of the proposal; however, this material will

not be used in the evaluation process unless specifically referenced from other portions of the offeror's proposal.

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. INFORMATION

1. Agency Resources

AGENCY support does not relieve the CONTRACTOR of the responsibility for quality assurance testing and adherence to HSD-defined standards.

AGENCY Project Manager is the primary point of contact for all technical related items. This person will coordinate with HSD staff to provide the following support to the CONTRACTOR:

- A Secure FTP Server will be provided for the transfer of daily electronic files between the contractor and HSD/ISD.
- HSD/ISD will provide pre-paid postage meter funds and equipment to the awarded vendor.

HSD/ISD will not purchase any additional equipment, provide any workspace or be responsible for any connectivity in providing the required services other than the items listed above.

2. Work Performance

For the purpose of preparing proposals, Offerors are to assume that on-site work will be performed at an offeror-proposed and Agency-approved site in a Santa Fe or Metropolitan Albuquerque area in the state of New Mexico. Local facilities shall provide a minimum of 90% of all storage, printing, folding, insertion and mailing activity. The use of local facilities enables Agency staff to perform quality assurance checks when corrective and preventative action is required. It also allows for same-day delivery of any special inserts the Division may require to be included in the mailings and for the annual in-person review of 1099s prior to mailing. Contractor management staff will be required to attend management meetings with state staff at state offices at request of the Project Manager.

B. TECHNICAL SPECIFICATIONS

1. Mandatory Technical Specifications

Offerors must meet all mandatory technical requirements, as detailed below, to be considered responsive to this RFP. A statement of concurrence is required.

(Note that the inability to meet ANY requirement below, or taking exception to, or qualifying, ANY requirement below, will result in the DISQUALIFICATION of the proposal. Any potential issues should be addressed through the Questions-and-Answers process PRIOR to proposal submittal.)

Pass/Fail Mandatory Technical Specifications

- 1) Offerors must agree to maintain the following inventory (subject to onsite inspection by Agency) at a minimum:

Envelopes:

- #10 single window – 120,000
- #9 single window – 88,000
- #9 single window lightweight – 35,000
- #9 pre-printed Business Reply – 47,500

Paper:

- 20 pound 8.5 x 11 white – 200,000 sheets.
- 24 pound 8.5 x 11 yellow – 25,000 sheets
- 24 pound 8.5 x 11 blue – 10,000 sheets
- 24 pound 8.5 x 11 green – 15,000 sheets

A statement to this effect is required.

- 2) Offeror must receive encrypted electronic files from the ISD eligibility system via an agency-supplied secure connection and send password-protected data via email or secure connection accommodating HSD/ Information Technology Division (ITD) specifications for encryption. 8.100.100.13 NMAC outlines the confidentiality requirements the Department must adhere to. Offeror must ensure compliance with any laws related to security and privacy. A statement to this effect is required.
- 3) Offeror must prepare notices utilizing current USPS standards. A statement to this effect is required.
- 4) Offeror must sort notices and aggregate them by name and address for insertion into a single envelope, thereby providing cost efficiencies and taking advantage of best postal rates. A statement to this effect is required.
- 5) Offeror must provide details of the technology used to operate using the Move/Update Process as required by the USPS. Appropriate documentation describing this required system interface must be submitted as part of the proposal.
- 6) Offeror must have the ability to provide printing that may include ferrous oxide and/or optical marks. A statement to this effect is required.
- 7) Offeror must have the ability to provide watermark printing on demand. A statement to this effect is required.
- 8) Offeror must describe in detail the capability to fold and insert printed materials into envelopes, including the requirement that certain notices will require the insertion of a flyer or form to be incorporated with the notice, which may include up to five (5) inserts. Appropriate documentation describing this process must be submitted as part of the proposal.
- 9) Offeror must guarantee transport of mail for same-day mail service to a New Mexico USPS Bulk Mail Center (BMC). Delivery must be prior to 5:00 PM Monday through Friday. Weekend and holiday mailings must be delivered prior to 5:00 PM the following business day. Note: Monday night or Tuesday morning files are defined as those files transmitted to the successful bidder after 8:00AM Monday morning through 7:59AM Tuesday morning.

Chapters 7 and 45 of Code of Federal Regulations as well as 8.100.180 NMAC mandates the time standards for which notices must be provided to constituents. A statement to this effect is required.

- 10) Offeror must provide HSD with the annual work schedule for the USPS BMC prior to the award of bid and by December 1 each year for the duration of the bid agreement. Mail scheduled for delivery on a Bulk Mail Center non- business day will be delivered by 5:00PM on the BMC next business day. A statement to this effect is required.
- 11) Offeror must demonstrate the ability to meet HSD required timeframes which includes:
 - Same day turn-around on routine maintenance tasks. Routine maintenance tasks are minor adjustments such as template text changes to a particular notice.
 - Three to five (3-5) day turn-around on specialized tasks. Specialized tasks are scheduled projects that do not fall within the normal schedule and must be completed within three to five (3-5) days, depending on complexity.A statement to this effect is required.
- 12) Offeror must provide print in color (four colors minimum), in Microsoft-compatible fonts and images in .JPG, .GIF, .BMP or .TIF format. A statement to this effect is required.
- 13) Offeror must provide the resources to complete large volume projects (up to 250,000 pieces in a single mailing). A statement to this effect is required.
- 14) Offeror must provide the ability to print in English and Spanish and options to print in additional languages (Farsi, Arabic, French, German, Russian and Vietnamese). A statement to this effect is required.
- 15) Offeror must provide different size paper printing capability, to include but not limited to; 3"x5", 8.5"x11", 11"x17", 8.5"x14", posters and postcard size, various weights and stocks as well as alternative printing and insertion methodologies. A statement to this effect is required.
- 16) Offeror must provide a monthly report of all mailings to the Agency. Reporting must include date and quantity mailed for all routine and specialized projects, outlining the invoiced number of each type product produced/mailed, notices, and cost per product as well as their successful delivery (on demand and or monthly as requested by ISD). A sample of this type of report must be submitted with proposal.
- 17) Offeror's processing equipment must be configured to handle equipment failure so that all processes, including printing and insertion, cause no interruption in mailing service. Ability to handle volumes up to 20,000 notices in a single day and 220,000 per month with back-up equipment is required. Appropriate documentation describing this process must be submitted as part of the proposal.
- 18) Offeror must have the ability to incorporate use of a bar-code for correspondence. A statement to this effect is required.

19) Offeror must provide to HSD detailed, monthly invoicing (in paper and Microsoft Excel format) to include:

- ◆ Vendor name and address
- ◆ Invoice date and number
- ◆ Purchase order number
- ◆ Billing month
- ◆ Detailed information regarding quantity, Item code and product description. Product description shall contain detailed information regarding the type of notice sent to include: Client notices printed, inserted, mailed sent, tax and cost, by single page – double sided, two page – double sided, three page – double sided, four page – double sided, and five page – double sided.
- ◆ Price of each
- ◆ Total amount to include subtotal, sales tax and total.
- ◆ Itemized bills for plain insertions and all other notices – ad hocs, and any printed, inserted, metered and sent special runs.
- ◆ Semi-annual reporting and recertification forms printed, inserted, mailed/sent, tax and cost
- ◆ Invoice/billing analysis upon request

A sample invoice must be submitted with the proposal. Required format of invoice subject to change depending on HSD business processes.

Scored Mandatory Technical Requirements (350 points):

- 1) Offerors must submit a thorough project plan for transition from current operations to successful bidder. At a minimum the project plan must include a Gantt chart including tasks to be performed and the timeframe for the completion of each task. This plan must include the ability to utilize current data in the form of templates, tables and transmitted files to meet the business requirement of HSD/ISD. This plan must also include implementation and testing components. (100 of 350 total points).
- 2) Offerors must describe in detail their technical solution for creating, merging, modifying and editing notice components. This must include a clear description of the capability of integrating transmitted data with templates and associated tables to create multiple forms of notices (80 of 350 total points).
- 3) Offeror must describe their formal quality assurance processes for on-going modifications and new notices. (50 of 350 total points).
- 4) Offeror must provide formal change control processes for on-going modifications and new notices. (50 of 350 total points).
- 5) Offeror must provide a formal archiving process that allows for searches by HSD/ISD on a minimum of six indexes against all generated notices for the life of the contract. This will include transition to Agency in a format to be approved by Agency. (50 of 350 total points).

- 6) Offeror must provide an annual report documenting their disaster-recovery plans and at least one documented and successful test of such disaster recovery, for data, product, and production capacity. The plan must indicate the maximum downtime anticipated in the event of a complete loss of the primary printing facility. A sample report must be submitted with proposal (20 of 350 total points).

2. Desirable Technical Specifications (50 points):

- 1) Offeror should provide alternative solutions and/or incentives that will reduce the overall cost or increase the efficiencies of producing HSD/ITD notices.

C. BUSINESS SPECIFICATIONS

1. Mandatory Business Specifications

Offerors must meet all mandatory specifications, as detailed below, to be considered responsive to this RFP. A statement of concurrence is required.

Note: The inability to meet ANY requirement below, or taking exception to, or qualifying, ANY requirement below, will result in the DISQUALIFICATION of the proposal. Any potential issues should be addressed through the Questions-and-Answers process PRIOR to proposal submittal.

(a) Corporate Experience

Offerors must submit a statement of relevant corporate experience within the last five (5) years, including the experience of major subcontractors. The narrative in response to this factor must thoroughly describe the offeror's experience with providing large quantity mailings within strict deadlines including the ability to electronically assemble documents.

In this Section, the offeror shall 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 of how long the offeror has been performing the services sought under this RFP.
- b. A description of the experience level, technical and application knowledge, and government experience of the corporate technical resources that may be used for the contract.
- c. The dates of the period of service.
- d. A description of the service provided.
- e. A statement of why the offeror believes this engagement constitutes relevant corporate experience to this procurement.

- f. A list of all current contractual relationships with the State of New Mexico, if any, or those completed within the previous five-year period. The listing should include the contract number, contract term, and procuring state agency for each reference.

(b). Corporate References

Offerors must submit three (3) external corporate references from clients who have received similar services to those proposed by the offeror for this contract, especially those projects in the public sector that have occurred within the past five (5) years. Offerors that propose to use Subcontractors for significant portions of the scope of work must include three (3) external references for each major Subcontractor. Each reference must include the name of the company, company current address, name of the contact person, telephone number, and the date and description of the services provided.

Note: The Offeror is responsible for verifying reference contact information. 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 could result in a zero score in this category.

(c). Financial and Corporate Stability of Offeror

Offerors must submit copies of their organization's most recent year's financial statements, as well as those for the preceding three (3) years. The financial statement submitted must be solely for the offeror, unless a parent entity is also committing to financially back the offeror in performance of the contract, in which case the financial statements of the parent entity must also be provided.

Offerors must 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.

Offerors must provide a statement as to whether there is any pending litigation against the offeror, and if such litigation exists, must attach an opinion of counsel as to whether the pending litigation may impair the offeror's performance in a contract under this RFP.

Offerors must include a statement of intention and evidence of ability to procure, submit to the Department, and maintain throughout the duration of the contract, a Performance Bond in favor of the Department to insure the Contractor's performance under the contract.

(d). Offeror Staff Experience

The offeror must provide all Contractor and Subcontractor, including clerical staff, personnel required to complete the Contractor responsibilities described in this RFP in the Contract Terms and Conditions, Appendix B. The Contractor is not to assume or propose the use of State staff to conduct any substantive work pursuant to this RFP, except as is specifically stated herein.

The Offeror must provide a detailed staff resume, as well as a staff qualification narrative summary, for each proposed core team member.

(e). Cost Proposal

1. Based on the scope of work and technical specifications, offerors must provide total cost for implementing the required project plan for transition as identified on the scored mandatory technical requirements (#1 and #2). This response will be awarded up to a maximum of 150 of the total 400 cost points.
2. a)Offerors must provide total labor cost for a sample 100 hour job to perform all processes needed to create a set of new notices.
 b) Provide cost for formal archiving solution as identified on scored mandatory technical requirement #5.
 c) Offerors must provide cost plus percentage that will be added to supplies or materials requested for a special project. Evaluation will be based on \$1,000.00 actual material cost.

The total of these three items will be awarded up to a maximum of 100 of the total 400 cost points.

3. Offerors must provide cost for items listed. Do not include postage in cost. This response will be awarded up to a maximum of 150 of the total 400 cost points.

Quantity	Tasks	Number of pages	Cost
100,000	Paper, print, fold, insert, sort, mail	1 page 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	2 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	3 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	4 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	5 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	1 page 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	2 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	3 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	4 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	5 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	1 page 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	2 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	3 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	4 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	5 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$

V. EVALUATION

A. EVALUATION POINT TABLE/SUMMARY

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

Factor	Points Available
<i>Service Experience</i>	100
<i>References</i>	50
<i>Cost</i>	400
<i>Mandatory Technical Requirements</i>	350
<i>Desirable Technical Requirements</i>	50
<i>In-State Vendor</i>	50
Total	1,000

B. EVALUATION FACTORS

Service Experience (100 points)

Points for offeror's service experience will be awarded based on the evaluation of: Offeror's relevant organizational experience in providing similar, large correspondence management and batch mailing services.

References (50 points)

Points for references will be awarded based upon an evaluation of offeror's work for previous clients receiving similar services to those proposed by the offeror for this project.

Cost (400 points)

Points for cost will be awarded upon the following formula:

$$\text{Offeror's Points} = \frac{\text{Lowest Responsive Offeror Cost}}{\text{This Offeror's Cost}} \times \text{Maximum Points}$$

Mandatory Technical Requirements (Total of 350 points – spread over the following six areas)

Transition Plan (100 points) - Points will be awarded based on the quality, efficiency, and thoroughness of the project plan submitted as well as on the amount of time the transition will take.

Technical Solution Description (80 points) – Points will be awarded based on the quality, thoroughness, technical relevance and feasibility of the proposed methodology submitted.

Quality Assurance Plan (50 points) – Points will be awarded based on the quality, thoroughness and reasonableness of the plan submitted.

Change Control Process (50 points) – Points will be awarded based on the quality, completeness and viability of the process proposed.

Archival Solution (50 points) – Points will be awarded based on the quality, effectiveness and flexibility of the solution proposed.

Disaster Recovery Plan (20 points) – Points will be awarded based on the quality, thoroughness and viability of the plan submitted.

Desirable Technical Requirements (50 points)

Points for desirable technical requirements will be awarded based on efficiency improvements and cost savings that could feasibly be gained by implementing the proposed improvements.

New Mexico Business Preference (50 points)

As a desirable specification of this RFP Offerors will be awarded points if their principle place of business is located in the State of New Mexico as defined in § 13-1-22 NMSA 1978. To be awarded the points Offerors must include a copy of their preference certificate in this section.

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 B-8.
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 the finalist offerors based upon the proposals submitted. The responsible offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Section V, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDICES

APPENDIX A: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 June 6, 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.

Jeff Barela, Fiscal Manager
New Mexico Human Services Department
Income Support Division-Program Administration Bureau
Pollon Plaza
2009 South Pacheco St.
Santa Fe, NM 87504-2348
Telephone: (505) 827-6244
Fax: (505) 827-7259
Email: jeff.barela@state.nm.us

APPENDIX B: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

The following definitions apply:

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

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

“**Family member**” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

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

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

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

Name(s) of Applicable Public Official(s) if any: _____
(Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____ Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____ Amount(s) of Contribution(s) _____

(Attach extra pages if necessary)
Nature of Contribution(s) _____

Purpose of Contribution(s) _____

Signature Date

Title (position) **--OR--**

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

Signature Date

Title (Position)

APPENDIX C: 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 shall 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 shall 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 shall 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://insurenewmexico.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 _____

APPENDIX D: COST PROPOSAL FORM

NOTE: All costs should all inclusive and include any applicable taxes.

Based on the scope of work and technical specifications, provide total cost for implementing the required project plan for transition as identified on the scored mandatory technical requirements (#1 and #2). \$ _____

Provide total labor cost for a sample 100 hour job to perform all processes needed to create a set of new notices. \$ _____

Provide cost for formal archiving and retrieval solution as identified on scored mandatory technical requirement #5. \$ _____

Provide a cost plus percentage that will be added to supplies or materials requested for a special project. Evaluation will be based on \$1,000.00 actual material cost. _____%

Provide cost for items listed below. Do not include postage in cost.

Quantity	Tasks	Number of pages	Cost
100,000	Paper, print, fold, insert, sort, mail	1 page 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	2 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	3 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	4 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	5 pages 2 sided	\$
100,000	Paper, print, fold, insert, sort, mail	1 page 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	2 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	3 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	4 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	5 pages 2 sided plus 1/3 cut sheet insert	\$
100,000	Paper, print, fold, insert, sort, mail	1 page 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	2 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	3 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	4 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$
100,000	Paper, print, fold, insert, sort, mail	5 pages 2 sided plus pre printed insert (Insert provided by HSD)	\$

APPENDIX E: SAMPLE CONTRACT

State of New Mexico

Human Services Department

Information Technology Agreement

Contract No. _____

THIS Information Technology Agreement (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the “Procuring Agency” and **Insert Contractor Name**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; and

WHEREAS, all terms and conditions of the **RFP Number and Name** and the Contractor’s response to such document(s) are incorporated herein by reference.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. “Acceptance” or “Accepted” shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.
- B. “Application Deployment Package” shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. “Business Days” shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. “Change Request” shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. “Chief Information Officer (“CIO”)” shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

- G. “Contract Manager” shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be Jeff Barela or his Designated Representative.
- H. “Default” or “Breach” shall mean a violation of this Agreement by either failing to perform one’s own contractual obligations or by interfering with another Party’s performance of its obligations.
- I. “Deliverable” shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. “Designated Representative” shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. “DoIT” shall mean the Department of Information Technology.
- L. “DFA” shall mean the Department of Finance and Administration; “DFA/CRB” shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. “Escrow” shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.
- N. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. “Executive Level Representative” shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.
- P. “GRT” shall mean New Mexico gross receipts tax.
- Q. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- R. “Independent Verification and Validation (“IV&V”)” shall mean the process of evaluating a Project and the Project’s product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
- S. “Know How” shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- T. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.
- U. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- V. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates

once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is **[Insert Name of Project, if applicable; otherwise delete sentence]**.

- W. “Project Manager” shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be Jeff Barela or his Designated Representative.
- X. “Qualified” means demonstrated experience performing activities and tasks with Projects.
- Y. “Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- Z. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- AA. “State Purchasing Agent (SPA)” shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- BB. “State Purchasing Division (SPD)” shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- CC. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- DD. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- EE. “Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.
- FF. “Turnover Plan” means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.

- C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the Procuring Agency without prior written approval.
- D. License.
Not Applicable. The Parties agree there is no License.
- E. Source Code.
Not Applicable. The Parties agree there is no Source Code.
- F. The Procuring Agency's Rights.
Not Applicable. The Parties agree the Procuring Agency does not have rights to the data.

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation under this Agreement shall not exceed [Insert Dollar Amount] including New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

- C. Taxes.

The Contractor shall not be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- D. Retainage. Not Applicable – The Parties agree there is no retainage.

- E. Performance Bond. Contractor shall execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a Performance Bond in the amount of **[Insert Total Amount of agreed upon Performance Bond]** in the name of the Procuring Agency. The Performance Bond shall be in effect for the duration of this Agreement and any renewals thereof. The required Performance Bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The Procuring Agency's right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor or to the State of New Mexico as a result of Contractor's failure to perform.

ARTICLE 4 – ACCEPTANCE

- A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).
- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:
1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
 2. Complies with the terms and conditions of the **RFP**;
 3. Meets the performance measures for the Deliverable(s) and this Agreement;
 4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
 5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within 15 Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

- C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The

Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT.

This Agreement shall terminate on **[Insert Termination Date]**, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

- A. **General.** By the either Party upon written notice to be delivered to the other party not less than ten (10) Business Days prior to the intended date of termination.
- B. **Appropriations.** By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. **Obligations and Waiver.** By termination pursuant to this Article, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. **THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.**

ARTICLE 7 – TERMINATION MANAGEMENT

- A. **Contractor.** In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
 - 1. Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency;
 - 2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Procuring Agency;
 - 3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
 - 4. Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 - 5. Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
 - 6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency's programs;

7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction;
8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the Procuring Agency for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Agency and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Agency, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

- B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:
1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
 2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

- A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, 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, during the time when the Contractor, its 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) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT.
- B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership.

Contractor hereby acknowledges and grants to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney’s fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor’s trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys’ fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:

1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2. Work with the Contractor to control the defense and settlement of the claim; and
3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Agency Rights. If any product or service becomes, or in the Contractor’s opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

1. Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency’s use of the product or service;
2. Replace or modify the product or service so that it becomes non-infringing; or
3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor’s obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

ARTICLE 11 - WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor’s official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. Not Applicable. The Parties agree there is no Software.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

ARTICLE 13 – STATUS OF CONTRACTOR

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the Procuring 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 personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

- A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:
1. Deliverable requirements, as outlined in Exhibit A;
 2. Due date of any Deliverable, as outlined in Exhibit A;
 3. Compensation of any Deliverable, as outlined in Exhibit A;
 4. Agreement compensation, as outlined in Article 3; or
 5. Agreement termination, as outlined in Article 5.
- B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:
1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
 - (a) the name of the person requesting the change;
 - (b) a summary of the required change;
 - (c) the start date for the change;

- (d) the reason and necessity for change;
 - (e) the elements to be altered; and
 - (f) the impact of the change.
2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

- A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
- 1. Providing the Project documentation;
 - 2. Allowing the IV&V vendor to sit in on the Project meetings; and
 - 3. Supplying the IV&V vendor with any other material as directed by the Project Manager.

ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 18 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 19 – 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 this Agreement's approval authorities.

ARTICLE 20 – SUBCONTRACTING

- A. **General Provision.** The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.
- B. **Responsibility for subcontractors.** The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency 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 Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

ARTICLE 23 –CONFLICT OF INTEREST

- A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.
- B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
 - 1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;
 - 2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given

- as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;
 - 4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
 - 5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
 - 6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.
- C. The Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. The Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, the Contractor learns that the Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that the Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.
- D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

ARTICLE 24 - RECORDS AND AUDIT

- A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this 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 Procuring Agency, CIO, SPA, and DFA and the New Mexico State Auditor's Office. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Procuring Agency 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 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 Agreement if it determines that such an audit is warranted or desired.

- C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD.
- D. Within thirty (30) days thereafter, or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.
- E. This audit shall contain the Schedule of Expenditures of Federal Awards for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a review of the 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.

ARTICLE 25 - AMENDMENT

- A. This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:
 - 1. Deliverable requirements, as outlined in Exhibit A;
 - 2. Due Date of any Deliverable, as outlined in Exhibit A;
 - 3. Compensation of any Deliverable, as outlined in Exhibit A;
 - 4. Agreement Compensation, as outlined in Article 3; or
 - 5. Agreement termination, as outlined in Article 5.
- B. If the HSD 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 contained herein, or to agree to the reduced funding.

ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwemexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING

- A. 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 Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, 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.
- B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar 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. 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. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.
- C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if 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.

ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

- A. **Severable.** The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. **Merger/Scope/Order.** This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For PROCURING AGENCY

[Insert: Name of Individual, Position
Procuring Agency Name
E-mail Address
Telephone Number
Mailing Address.]

For CONTRACTOR

[Insert Name of Individual, Position,
Company Name,
E-mail Address,
Telephone Number,
Mailing Address.]

Any change to the Notice individual or the address, shall be effective only in writing.

ARTICLE 30 – GENERAL PROVISIONS

- A. 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, including but not limited to:
1. **Civil and Criminal Penalties.** 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.
 2. **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 agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be

in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

3. 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 Procuring Agency.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. 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, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. 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 expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

ARTICLE 31 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 34 – DEBARMENT AND SUSPENSION and OTHER RESPONSIBILITY MATTERS

- 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 Agreement the Contractor certifies by signing this Agreement, 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 Agreement, 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 Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, 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 Agreement 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 Procuring Agency's Project Manager if, at any time during the term of this Agreement, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this Agreement 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 Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to Procuring Agency, Procuring Agency may terminate the Agreement.

C. As required by statute, regulation or requirement of this contract, and as contained in Paragraph A, above, Contractor shall require each proposed first-tier sub-contractor 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 sub-contractor, 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 Procuring Agency when it requests sub-contractor approval from the Procuring Agency. If the sub-contractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the Procuring Agency may refuse to approve the use of the sub-contractor.

ARTICLE 35 – 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 Agreement, 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 Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement 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 Agreement. 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 Procuring Agency, termination of the Agreement.

ARTICLE 36 – 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 Agreement, 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 Agreement 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.”

ARTICLE 37 – 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:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Contractor’s policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Provide all employees engaged in performance of the contract 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 contract, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) 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 5 days after such conviction;
5. Notify the Procuring Agency Project Manager in writing within 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 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:
 - (a) Taking appropriate personnel action against such employee, up to and including termination; or
 - (b) 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 Agreement 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 Procuring Agency, 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 Agreement and subject the Contractor to suspension of payments under the Agreement and/or termination of the Agreement in accordance with paragraph 4, above.

ARTICLE 38 – FINDINGS AND SANCTIONS

- A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the Procuring Agency audits, federal audits, and disallowances of the services provided pursuant to this Agreement and the administration thereof.
- B. The Contractor will make repayment of any funds expended by the Procuring Agency subject to the jurisdiction and authority of which an auditor finds were expended, or to which one of both of the federal funding agencies, United States Department of Health and Human Services (DHHS) takes exception and requests reimbursement through a disallowance or deferral is based upon the acts or omissions of the Contractor which violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the NM Legislature.
- C. If the Procuring Agency 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 Procuring Agency 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.

ARTICLE 39 – PERFORMANCE

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

- A. All work will be performed under the supervision of the contractor or the contractor's responsible employees.
- B. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. 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 contract. 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 contract will be subcontracted without prior written approval of the IRS.

- E. The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- F. The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

ARTICLE 40 – 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 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 return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. 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 contract. 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 \$1,000.00 or imprisonment for as long as 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 \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- C. Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.
- D. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- E. Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency'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 Section 10) 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.

ARTICLE 41 – INSPECTION

The IRS and the Agency 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 contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

ARTICLE 42 – CONTRACTOR’S RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS

- A. The Contractor is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.
- B. The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement are properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement and Exhibit A.
- C. The Contractor agrees that it will comply with all applicable Federal, State, and local laws, regulations, codes and ordinances in performance of the Services.

ARTICLE 43 – CONTRACTOR’S RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS RELATING TO INFORMATION SECURITY

- A. The Contractor and all its subcontractors, consultants, or agents performing the Services under this Agreement must comply with the following:
 - 1. The Federal Information Security Management Act of 2002 (FISMA);
 - 2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - 3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
 - 4. Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;
 - 5. Social Security Administration (SSA) Office of Systems Security Operations Management Guidelines;
 - 6. NMAC 1.12.20, *et seq.*; and
 - 7. Service Level Agreement (SLA) Security Components

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____
Cabinet Secretary
Human Services Department

By: _____ Date: _____
[Insert Contractor Name]
[Insert Title and Company Name]

By: _____ Date: _____
Chief Information Officer
Human Services Department

Approved for legal sufficiency:

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

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:

CRS ID Number: _____

By: _____ Date: _____
Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: _____ Date: _____
Darryl Ackley, State CIO and Cabinet Secretary
Department of Information Technology

This Agreement has been approved by the State Purchasing Agent:

By: _____ Date: _____
Purchasing Agent for the State of New Mexico

Exhibit A **Scope of Work**

I. Purpose of the Agreement including goals and objectives:

Electronically assemble, including concatenation of all notices to one address, through their own computer application a merging of the various components that make up one of the 300 possible client notice types. This includes template files of the basic content of the notice in English and Spanish, a table of possible reason codes with associated definitions, and NM statutes and rules that may or may not be referenced. The merging of the various data into the template is done by means of a ‘symbolic’ value in the template including the actual client specific data from a delimited flat file of that relates to the notice being sent (i.e. name, address, SSN, benefit amount, dependents, etc.). Translations must occur from English to Spanish for date formats.

Make changes and additions to any of the existing forms as well as integrate new forms into the process in a timely and accurate manner – often times the same day as requested. This includes participating in project meetings, providing tests and samples of created notices and providing timely accurate feedback associated with any problems in the modifications and additions.

Attach pre-printed forms, flyers, etc. provided by agency with various types of mail outs as instructed.

Print, sort, fold, stuff and bulk mail notices along with any agency provided attachments through USPS within timeframes required by agency.

The Agency objective related to the HSD strategic plan is to improve processes to ensure compliance with state laws and regulations. Current services are purchased under an exemption which may not be applicable to all items being procured.

II. Performance Measures:

Accurate, timely, professional, cost effective HSD/ISD correspondence with our clients.

III. Activities.

See deliverables listed below.

IV. Deliverables

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

A. Deliverable Number 1 Migration and Implementation

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
Transition from current vendor and Implementation	8/1/12	To be included in cost proposal

Task Item	Sub Tasks	Description

Complete task of transitioning from the current vendor as identified in the project plan	1.1	A detailed project plan must be provided that identifies in detail how the contractor plans to implement the merging of the various data provided by the ISD2 system into the template by means of a 'symbolic' value in the template which will include actual client specific data from a delimited flat file of that relates to the notice being sent (i.e. name, address, SSN, benefit amount, dependents, etc.).
Provide a timeframe on the length of time to transition	1.2	A detailed timetable identifying a date in which the contractor anticipates to be fully functional in regards to the specifications identified in the scope of work. Being that the current eligibility system (ISD2) is being phased out and replaced with the ASPEN system it is crucial that the transition is prompt.
Testing of sample notices	1.3	A test phase of sample notices must be generated and tested to ensure that the vendor can perform the tasks that are identified in the scope of work prior to full implementation.
Timely sorting and delivery of all notices	1.4	Print, sort, fold, stuff and bulk mail notices along with any agency provided attachments through USPS within timeframes required by agency.

B. Deliverable Number 2 - Ongoing Production and Change Orders

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
Ongoing Production	As needed/requested	Should be included in proposal

Task Item	Sub Tasks	Description
Ongoing production of correspondence as needed including merge, print, stuff and mail	2.1	The contractor should conduct on-going production of print jobs and mailing as needed on a daily, weekly or monthly basis to meet the needs of the Agency. The routine tasks should be completed and included on a monthly report so that the agency can track and monitor the volume of work completed each month.
Modifications and changes to production correspondence as needed	2.2	The contractor must have the flexibility to implement changes that may be needed by the agency. These changes may require a modification to a template or may include a specialized task that may not be included in routine tasks. An agency representative will work with the contractor to complete these tasks as needed.
Monthly Report of all mailings for the agency	2.3	A monthly report of all mailings must be provided to the agency. Reporting must include date and quantity mailed for all routine and specialized projects, outlining the invoiced number of each type product produced/mailed, notices, and cost per product as well as their successful delivery (on demand and or monthly as requested by ISD). A sample of this type of report must be submitted with proposal.

APPENDIX F: HIPAA BUSINESS ASSOCIATES AGREEMENT

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is entered into between the New Mexico Human Services Department (“Department”) and _____, hereinafter referred to as “Business Associate,” pursuant to the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder

1. Definition of Terms

- a. **Business Associate.** "Business Associate" shall mean _____, acting in the capacity of a business associate as defined in 45 CFR § 160.103.
- b. **Covered Entity.** "Covered Entity" shall mean the Health Care Component of the New Mexico Human Services Department, which includes the Medical Assistance Division (“MAD”).
- c. **Individual.** "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- d. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E, as currently in effect or as subsequently amended.
- e. **Protected Health Information.** "Protected Health Information" or “PHI” shall have the same meaning as in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- f. **Required By Law.** "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- g. **Secretary.** "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- h. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to the Department’s Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.

- e. Business Associate agrees to ensure that any agent to whom it provides PHI received from MAD, or created or received by Business Associate on behalf of MAD, agrees to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such information.
- f. Business Associate agrees to provide, at MAD's request, and in a reasonable time and manner, access to PHI in a Designated Record Set to MAD or, as directed by MAD, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- g. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that MAD directs or agrees to, pursuant to 45 CFR § 164.526, at the request of MAD or an Individual, and in the time and manner set forth in Department regulations.
- h. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI received from MAD, or created or received by Business Associate on behalf of MAD, available to MAD or to the Secretary within seven (7) days of receiving a request from MAD or receiving notice of a request from the Secretary, for purposes of the Secretary's determining MAD's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for MAD to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Business Associate agrees to provide to MAD or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 of this Agreement, to permit MAD to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for or on behalf of MAD as set forth in the contract between the parties, Contract No. _____, of which this Agreement is an integral part, provided that such use or disclosure would not violate the Privacy Rule if done by MAD or MAD's minimum necessary policies and procedures. Business Associate may not use or disclose PHI received or created pursuant to this Agreement, except as follows:

- a. Except as otherwise limited by this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited by this Agreement, Business Associate may disclose PHI where the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j)(1).
- d. MAD shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by MAD.

4. Obligations of MAD to Inform Business Associate of Privacy Practices and Restrictions

- a. MAD shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. MAD shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. MAD shall notify Business Associate of any restriction in the use or disclosure of PHI that MAD has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Term and Termination

- a. Term. This Agreement shall be effective concurrently with the effective date of Contract No. _____ between Business Associate and the Department. This Agreement shall also terminate concurrently with that contract, except that obligations of Business Associate under this Agreement related to final disposition of PHI shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession that was received from MAD, or created or received by Business Associate on behalf of MAD, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to MAD notification of the conditions that make return or destruction of PHI not feasible. Business Associate shall require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required of Business Associate hereunder.

6. Miscellaneous

- a. Interpretation. Any ambiguity in this Agreement, or any inconsistency between the provisions of this Agreement and the main body of the contract of which this Agreement is an integral part, shall be resolved to permit MAD to comply with the Privacy Rule.
- b. Business Associate's Compliance with HIPAA. MAD makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, MAD shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the Agreement pursuant to its termination provisions.

- d. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than MAD, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, sub-business associates or employees assisting Business Associate in the fulfillment of its obligations under this Agreement available to MAD, at no cost to MAD, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against MAD or its employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this Agreement, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.

IN WITNESS THEREOF, the parties hereto separately acknowledge this Business Associate Agreement in addition to their execution of Contract No. _____ of which it is an integral part.

HUMAN SERVICES DEPARTMENT BUSINESS ASSOCIATE

By: _____ By: _____
 Sidonie Squier., Secretary

Date: _____ Date: _____

Approved as to form and legal sufficiency:

By: _____
 Office of General Counsel

Date: _____