

STATE OF NEW MEXICO
Human Services Department

MEDICAL ASSISTANCE DIVISION

P. O. Box 2348

Santa Fe, New Mexico 87504-2348



REQUEST FOR PROPOSALS (RFP)

RFP # 12-630-8000-0008

**FOR THE PROVISION OF
LONG TERM CARE NURSE AIDE
COMPETENCY EVALUATION PROGRAM**

**State Fiscal Year 2013
(July 1, 2012-June 30, 2013)**

ISSUE DATE MARCH 13, 2012

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The New Mexico Human Services Department (HSD) is the designated single state agency for administration of the Medicaid State Plan under Title XIX of the Social Security Act. A joint powers agreement between the New Mexico Human Services Department and the New Mexico Department of Health (DOH), establishes responsibilities for nurse aide training and competency evaluation program activities as required under the Medicaid program. DOH evaluates the appropriateness of nurse aide competency as measured by patient care outcome during the survey process. The DOH also maintains a nurse aide registry according to federal regulations governing operation, content, and disclosure of registry data for all individuals who have met the requirements governing Nurse Aide Training and Competency Evaluation Program (NATCEP).

The purpose of this Request for Proposals (RFP) is to invite responsible Offerors to submit competitive sealed proposals for professional services to provide a statewide program for nurse aide competency evaluation, nurse aide employment and in-service education verification in New Mexico. The successful Offeror will be the sole testing agency for nurse aides employed in certified nursing facilities.

HSD currently reimburses for nursing facility services in accordance with specific requirements regarding the level of training and competency for nurse aides employed by the nursing facilities. Federal certification standards set mandates for in-service training and competency. Federal Nursing Home Reform legislation, including OBRA 1987 (P.L. 100-203), OBRA 1989 (P.L. 101-239) and OBRA 1990 (P.L. 101-508), culminated in final rules, on September 26, 1991, setting forth requirements for nurse aide training and competency evaluation. See 42 U.S.C. §§ 1396b and 1396r; 56 F.R. 488880; and 42 C.F.R. §§ 431.120, 433.15, 483.75, and 483.150 to 483.160.

In order to be considered, all proposals must be received by HSD, no later than 5:00 P.M., Mountain Time, on April 13th, 2012. NO FACSIMILE TRANSMISSIONS OF A PROPOSAL SHALL BE ACCEPTED. Proposals shall not be opened publicly and shall not be available for public inspection until after contract award. All proposals shall become the property of HSD.

B. SUMMARY SCOPE OF WORK

HSD's professional services contract with the successful Offeror (referred to in this Part as the "Contractor") shall contain a Scope of Work (Exhibit A to the Contract) that provides substantially the following provisions (also see Appendix B).

The Contractor shall be the sole testing agency for nurse aides employed in certified

nursing facilities. The Contractor's test scheduling plan shall be designed to minimize as much as possible the number of "no shows" for scheduled test dates. The Contractor shall be responsible for providing the following:

1. Development or utilization of standardized written, skills and oral performance-based examinations;
2. Managing nurse aide candidate applications;
3. Screening of nurse aide candidate eligibility;
4. Scheduling and administering examinations;
5. Scoring, certifying and reporting examination;
6. Managing computer-based test data;
7. Reporting test data to DOH, which is the agency responsible for the New Mexico Nurse Aide Registry;
8. Maintaining employment and in-service verification for biennial nurse aide recertification and for the New Mexico Nurse Aide Registry;
9. Developing all necessary forms and procedures for use in verifying the employment for nurse aides on the New Mexico Nurse Aide Registry; and,
10. Developing and implementing appropriate procedures for verifying in-service training and education for nurse aides.

C. **SCOPE OF PROCUREMENT**

The scope of procurement shall encompass the defined Scope of Work, detailed in Sample Professional Services Contract, Appendix B and Scope of Work (Exhibit A of Appendix B) in this RFP. The contract is scheduled to begin on approximately July 1, 2012, or upon receiving all required state approvals, whichever is later for a term of one year. The contract may be extended for up to three (3) additional one (1) year periods, or any portion thereof at the discretion of the Department, pursuant to funding availability and satisfactory service provision, as determined by the Department. In no circumstance shall the contract exceed a total of four (4) years in duration. This procurement will result in a single source award.

The scope of this procurement shall encompass the defined Scope of Work, detailed in the Sample Professional Services Contract attached to this RFP (Exhibit A of Appendix B). The contract is scheduled to begin on July 1, 2012 or upon receiving all required state approvals, whichever is later, and, with executions of all extensions above, to end on June 30, 2016. Under no circumstances shall the contract exceed a total of four (4) years.

Services will be provided on a firm, fixed rate basis, as further described in Section IV and in Exhibit A of this RFP. Services will be required to comply with all applicable provisions of federal and state law and regulations.

This RFP is governed by the New Mexico Procurement Code, NMSA 1978, Sections 13-

1-28 to 13-1-199, and GSD Rule No. 1.4.1 NMAC. This RFP may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interests of HSD. This RFP shall not be modified except by written amendment, in accordance with the procedures set forth in GSD Rule No. 1.4.1.34 NMAC. In no event shall HSD be responsible for any costs of an Offeror incurred in the preparation, submission or modification of a proposal, or costs incurred to participate in proposal discussions or negotiations (if any).

D. **PROCUREMENT MANAGER**

The HSD has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone numbers are listed as follows:

Elizabeth C. Cassel, Ph.D., Procurement Manager
Human Services Department, Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: 505- 827-7715 Fax Number: 505-827-7229
Elizabeth.cassel@state.nm.us

All deliveries via express carrier (including proposal delivery) should be addressed as follows:

Elizabeth C. Cassel, Ph.D., Procurement Manager
Human Services Department, Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: 505- 827-7715 Fax Number: 505-827-7229
Elizabeth.cassel@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 HSD.

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

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

TTY: 800-659-8331

Voice: 800-659-1779

VCO (Voice Carry Over): 877-659-4174

Speech-to-Speech: 888-659-3952

Spanish: 800-327-1857 (includes Spanish-to-Spanish and translation from English to Spanish)

http://www.hamiltonrelay.com/state_711_relay/state.html

E. **DEFINITION OF TERMINOLOGY**

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

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

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

"**Contractor**" means a successful Offeror who enters into a binding contract.

“**Department**”: For purposes of administering the RFP and associated proposals, “Department” means the New Mexico Human Services Department.

"**Determination**" means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

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

"**DFA**" means the Department of Finance and Administration for the State of New Mexico.

"**Evaluation Committee**" means a body appointed by the HSD management to perform the evaluation of Offeror proposals.

"**Evaluation Committee Report**" means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the State Purchasing Agent for contract award. It contains all written determinations resulting from the procurement.

"**Finalist**" is defined as an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“**HSD**” means the Human Services Department.

"**Mandatory**" The terms "must", "shall", "will", "is required", or "are required", identify a

mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

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

"Procurement Manager" means the person or designee authorized by the HSD 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.

"Responsible Offeror" means one who submits a responsive proposal and who has furnished, when required, information and data to prove that his/her financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

"Secretary" means the Cabinet Secretary of the New Mexico Human Services Department.

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

F. **BACKGROUND INFORMATION**

This section provides background on the Human Services Department and the operating environment of the HSD 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.

HSD Mission and Roles

To reduce the impact of poverty on people served by providing services that prevent or reduce poverty; to reduce the impact of poverty on the State of New Mexico; to impact positively the social and economic health of New Mexico; and to assure low-income and disabled individuals in New Mexico equal participation in the life of their communities.

HSD Goals and Objectives

The Human Services Department's major goals and objectives are:

Access

The Department strives for access to support and services for New Mexicans to move toward self-sufficiency in life.

Quality

The Department commits to quality by providing services in a respectful manner and services that produce results.

Accountability

The Department engages in accountability to all of our customers (clients, employees, the public, and taxpayers) through monitoring, careful explanations, and correct decisions.

Organization of the Department

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

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

G. **PROCUREMENT LIBRARY**

The Procurement Manager has established a Procurement Library. Offerors are encouraged to review the material contained in the Procurement Library by contacting the Procurement Manager or his/her designee and scheduling an appointment. Offerors are welcome to take notes in the Procurement Library or to bring a portable copy machine to the library.

The library contains information listed below:

- Procurement Regulations, NMAC 1.4.1. A copy may be obtained from the following web site address: <http://www.generalservices.state.nm.us/spd/>

II. CONDITIONS GOVERNING THE PROCUREMENT

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

The Procurement Manager will make every effort to adhere to the following schedule in the procurement of the NACEP services. The Department reserves the right to revise the dates on this schedule without the need to amend the RFP. Revised dates will be shared with the Offerors with as much advance notice as possible.

In addition, although HSD intends that the contract awarded under this RFP take effect on July 1, 2012, no contract is effective or binding until approved in writing by the New Mexico Department of Finance and Administration.

A. SEQUENCE OF EVENTS

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

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	HSD	3/13/12
2.	Distribution List Response	Potential Offerors	3/19/12
3.	Deadline to Submit Questions	Potential Offerors	3/19/12
4.	Response to Written Questions/RFP Amendments	HSD	3/22/12
5.	Submission of Proposal	Offeror	4/13/12
6.	Proposal Evaluation	Evaluation Committee	4/16/12
7.	Selection of Finalists	Evaluation Committee	4/16/12
8.	Best and Final Offers from Finalists	Offeror	4/17/12
9.	Oral Presentation by Finalists	Offeror	4/19/12
10.	Finalize Contract	HSD, Offeror	4/20/12
11.	Contract Award	State Purchasing Agent/DFA	4/20/12
12.	Protest Deadline	Offeror	5/04/12
13.	Initiation of Contract	HSD	7/1/12

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

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

The RFP is being issued by the New Mexico Human Services Department on March 13, 2012. Copies of the RFP will be provided to HSD's mailing list of potentially interested firms and to firms that call the Procurement Manager, Dr. Elizabeth Cassel, at 505-827-7715, or submit a written request to Dr. Cassel at the address in Section I, Part D or by fax transmission to 505-827-7229.

2. Distribution List Response Due

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. The form should be signed by an authorized representative of the organization, dated and returned by close of business on March 19, 2012.

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 Written Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP until close of business on March 19, 2012. All written questions must be submitted via e-mail to the Procurement Manager (see Section I, Paragraph D).

4. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on March 22, 2012 via SPD website 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 two (2) days after the answers and/or amendments were issued.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE **NO LATER THAN 12:00 PM MOUNTAIN STANDARD TIME ON APRIL 13, 2012. Proposals received after this deadline will not be accepted.**

The date and time of receipt will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Part D, which is as follows:

Elizabeth C. Cassel, Ph.D., Procurement Manager
Human Services Department, Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: 505-827-7715 Fax Number: 505-827-7229
Elizabeth.cassel@state.nm.us

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the LONG TERM CARE NURSE AIDE COMPETENCY EVALUATION PROGRAM Request for Proposals. Proposals submitted by facsimile or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 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 HSD management. This process will take place April 16, 2012. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions **SHALL NOT** be initiated by the Offerors.

7. Selection of Finalists

Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations will be determined at this time.

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 by April 17, 2012. Best and final offers may be clarified and amended at the finalist Offeror's oral presentation.

9. Oral Presentation by Finalists

Finalist Offerors may be required to present their proposals to the Evaluation

Committee. The Procurement Manager will schedule the time for each Offeror presentation. All Offeror presentations will be held at a location in Santa Fe, New Mexico to be determined. Each presentation will be limited to two (2) hours in duration.

10. Finalize Contract

The contract will be finalized with the most advantageous Offeror April 20, 2012. In the event that mutually agreeable terms cannot be reached within the time specified, the HSD reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

11. Contract Award

After review of the Evaluation Committee Report, the recommendation of the HSD management and the signed contract, the HSD will award the contract on April 20, 2012, for final approval at the Department of Finance and Administration.

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

The award is subject to DFA approval.

12. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) day protest period for responsive Offerors shall begin on the day following the contract award and will end at close of business on May 4th, 2012. 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 Protest Manager. The protest must be delivered to the Protest Manager:

Danny Sandoval, Acting Director
Administrative Services Division
Human Services Department
P.O. Box 2348
Santa Fe, NM 87504-2348

All deliveries via express carrier should be addressed as follows:

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

Protests received after the deadline or not in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations will not be accepted.

C. GENERAL REQUIREMENTS

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

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors

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

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The HSD personnel will not merge, collate, or assemble proposal materials.

6. Offerors' Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after

due date for the receipt of a best and final offer if one is solicited.

8. Disclosure of Proposal Contents

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

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the 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

This procurement in no manner obligates the State of New Mexico or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the HSD determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. The HSD's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

The HSD 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 HSD 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 HSD and a contractor will follow the format specified by the HSD and contain the terms and conditions set forth in Appendix B, "Contract Terms and Conditions". However, the HSD 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 HSD's terms and conditions, as contained in this section or in Appendix B, that Offeror must propose specific alternative language. The HSD 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 HSD 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.

All contracts for professional services are subject to the review and approval of DFA pursuant to 13-1-118 NMSA 1978 and DFA Rule 2 NMAC 40.2.

16. Offeror's Terms and Conditions

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

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the HSD and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

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

21. Notice

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

22. HSD Rights

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

23. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, Offerors and contractors must secure from the HSD 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 this Request for Proposals shall become the property of the HSD 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 HSD.

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 HSD'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.

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 HSD, the version maintained by the HSD shall govern.

28. New Mexico Employees Health Coverage

Employee health insurance coverage is mandatory to be awarded a contract based on an RFP. To be responsive to this RFP, and to eligible for contract award, the Offeror must agree by signing the agreement attached hereto as Appendix H.

29. Suspension and Debarment Requirement

The offeror shall certify, by signing the agreement attached hereto as Appendix E that to the best of its knowledge and belief that the offeror and/or its Principals are not or have not been debarred, suspended, proposed for debarment or declared ineligible for the award of contract by any Federal department or agency.

30. Campaign Contribution Disclosure Form

Offeror must complete and sign the Appendix C, Campaign Contribution Form, whether any applicable contribution has been made or not. This form must be submitted with your proposal.

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**

This section describes the format and organization of the Offeror's response. Failure to conform to these specifications may result in the disqualification of the proposal.

A. **NUMBER OF RESPONSES**

Offerors shall submit only one proposal.

B. **NUMBER OF COPIES**

Offerors shall deliver six (6) identical copies of their proposal (binder 1), two (2) copies of the cost proposal (binder 2), and six (6) copies of supporting technical documentation (binder 3) to the location specified in Section I, Part D on or before the closing date and time for receipt of proposals.

C. **PROPOSAL FORMAT**

All proposals must be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.

1. **Proposal Organization**

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

Binder #1

- a) Letter of transmittal
- b) Table of contents
- c) 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 (Appendix D)
- 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 this 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.

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

2. Letter of Transmittal

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

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

IV. SPECIFICATIONS

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

Failure to respond to Mandatory Specifications will result in the disqualification of the proposal as non-responsive.

MANDATORY SPECIFICATIONS

1. Corporate Experience

a. The Offeror shall give a brief history of itself and describe its form of organization (e.g., for-profit corporation, non-profit corporation, partnership, joint venture, etc.), including the years that the Offeror has been in business and a description of the Offeror's parent companies, subsidiaries or joint ventures. If the Offeror is an affiliate, designate the percent of the parent's total revenue that is generated by the Offeror. If the Offeror is a joint venture partner, designate the percentage of ownership and revenues recognized by each partner to the combined association. The Offeror shall also provide a description and an organizational chart displaying the Offeror's overall governance and management structure, including parent-subsidiary, affiliate, and joint-venture relationships.

b. Offerors must have sufficient resources to support the data management system necessary to complete this scope of work.

c. Offerors must include with their proposals a description of how off-site technical support staff may be deployed and effectively managed. The response to this specification should include a thorough description of the proposed location of off-site resources, the management and quality assurance techniques to be employed to insure effective use of the resources as well as documentation of the successful use of the resources and management techniques on other similar projects.

d. Offeror must explain why they are financially capable of performing the activities necessary for the timely development of the scope of work within the timeline developed for full implementation of the event, since payment will be made on a monthly reimbursement basis.

e. The Offeror must state previous relevant experience with contracted efforts similar to the one proposed in this RFP. The Offeror must also include identifying information on individuals and organizations that may be contacted by HSD concerning those contracts. The discussion of relevant prior experience should address each major part of Scope of Work outlined in Part II of this RFP and be presented in the same order.

f. An Offeror must not be a New Mexico Medicaid provider of services or be an owner of or have a proprietary interest in a business that is a provider of New Mexico Medicaid services. An Offeror must not function as an auditor, consultant, claims preparer or otherwise be employed by a New Mexico Medicaid provider.

g. Offerors must briefly describe detailed knowledge of federal requirements. Federal Nursing Home Reform legislation, including OBRA 1987 (P.L. 100-203), OBRA 1989 (P.L. 101-239) and OBRA 1990 (P.L. 101-508), culminated in final rules, on September 26, 1991, setting forth requirements for nurse aide training and competency evaluation. See 42 U.S.C. §§ 1396b and 1396r; 56 F.R. 488880; and 42 C.F.R. §§ 431.120, 433.15, 483.75, and 483.150 to 483.160.

h. Offerors must submit resumes of all proposed professional staff members who will be performing services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as any certifications or other professional credential that clearly shows proposed staff member's expertise.

2. 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. Offers 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, current company 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.

3. Financial and Corporate Stability of Offeror

Offerors must submit copies of their organization's most recent years 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 back financially 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, 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 their intention and evidence of ability to procure,

submit to the HSD, and maintain throughout the duration of the contract, a Performance Bond in favor of the HSD to insure the Contractor's performance under the contract.

4. 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.

5. Test Development and Delivery

Work Plan: The Offeror must describe in narrative form the manner in which the contracted scope of work will be accomplished. The work plan will be organized in the following manner:

a. **Planning and Development Task:**

The Offeror must describe the manner in which necessary resources, including personnel, equipment and supplies will be allocated to plan and organize the activities outlined in Part I of this RFP and present it in the same order. The Offeror must identify the appropriate activities and the location(s) (city) of those activities and associate those with appropriate personnel. This must include a schedule for installing necessary equipment, recruiting personnel and providing training, and other pre-operations functions.

b. **Implementation Task:**

The Offeror must provide a narrative description of what will be done to execute Scope of Work and how it will be accomplished. The description should address each major part of the Scope of Work and be presented in the same order as outlined in the scope of work. The description must include a specific description of how each deliverable, including proposed response dates for each deliverable, will be accomplished. The Offeror shall specifically describe how it will schedule tests to meet the requirements.

6. Test Data Reporting

The Offeror must provide a narrative description of what will be done to execute Scope of Work outlined in Part I B, C and D of this RFP and how it will be accomplished. The description should address each major part of the Scope of Work and be presented in the same order as outlined in Part I B, C and D. The description must include a specific description of how each deliverable described in Part I B and C, including proposed

response dates for each deliverable, will be accomplished. The Offeror shall specifically describe how it will schedule tests to meet the requirements of Part I B, and C (2) of the RFP.

7. Cost Proposal

- a. Offerors must complete the Cost Proposal listed in Appendix D. The total expenditures must include travel, per diem, fringe benefits and any overhead costs for contractor personnel. New Mexico gross receipts taxes are excluded from the proposed maximum hourly rates. They shall be shown separately on the invoice.
- b. Offerors must provide detailed narrative information regarding the items above that you have identified as projected expenditures.
- c. Offerors must provide a proposed “total contract price” for the entire contract term of four (4) years. (Offerors shall not include New Mexico gross receipts taxes in the “total contract price.”) The proposed “total contract price” shall be broken down into the following contract periods:

Period One: 07/01/12 to 06/30/13;

Period Two: 07/01/13 to 06/30/14;

Period Three: 07/01/14 to 06/30/15; and

Period Four: 07/01/15 to 06/30/16.

The “total contract price” will be calculated by adding the total price for each of the four contract periods.

The total price for each contract period will be calculated as follows:

- a) (skills test rate multiplied by projected number of skills tests) +
- b) (written test rate multiplied by projected number of written tests) +
- c) (oral test rate multiplied by projected number of oral tests) +
- d) (recertification rate multiplied by projected number of recertifications) +
- e) (no show rate multiplied by projected number of no shows) = total price for one period

8. Oral Presentation

Points will be awarded based upon the content of the Offeror’s oral presentation and will be added to the previously assigned points to attain final scores.

V. EVALUATION

A. EVALUATION POINT TABLE/SUMMARY

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

FACTOR	POINTS AVAILABLE
1. Corporate Experience	200
2. Corporate References	50
3. Test Development and Delivery	250
4. Test Data Reporting	250
5. Cost Proposal	200
6. Oral Presentation	50
7. New Mexico Employees Health Coverage	Pass/Fail
8. Campaign Contribution Disclosure Form	Pass/Fail
TOTAL	1,000

B. EVALUATION FACTORS

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

1. **Corporate Experience (200 points)**

The corporate experience of the Offeror will be evaluated based upon the evaluation of Offeror's relevant experience and expertise in nurse aide competency evaluation programs. (In evaluating an Offeror's experience and expertise, HSD shall also weigh the experience and expertise of the key personnel that the Offeror will assign to a contract that may be awarded under this RFP. If HSD is evaluating the experience and expertise of an Offeror who is performing, or has performed, the same or similar services as those that are the subject of this RFP, HSD may also take into account its actual experience with the Offeror.)

2. **Corporate References (50 points)**

Points for references will be awarded based on evaluation of the Offeror's work for previous clients (other than HSD) regarding similar services to those proposed by the Offeror for this project.

3. **Test Development and Delivery (250 Points)**

Points will be awarded based upon the content of the Offeror's proposal and any deliverables relating to: responsiveness to the background of New Mexico's test candidates; test reliability and validity; responsiveness to regional test sites' test needs; plans for test instrument security; supervision of nurse examiners and

proposed plan to mitigate, as much as possible, on a monthly basis the number of “no shows” for scheduled tests.

4. Test Data Reporting (250 points)

Points will be awarded based upon the content of the Offeror’s proposal and any deliverables relating to: data system capability; test outcome reporting; and coordination with New Mexico Nurse Aide Registry.

5. Cost Proposal (200 points)

Points for individual references will be awarded based upon an evaluation of the individual’s work performed for previous clients receiving similar services to those proposed for the staff member for this contract.

6. Oral Presentation (50 points)

Points will be awarded based upon the content of the Offeror’s oral presentation and will be added to the previously assigned points to attain final scores.

7. New Mexico Employees Health Coverage (0 Points)

Pass or fail

8. Campaign Contribution Disclosure Form (0 Points)

Pass or fail

C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II, Paragraph B.6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.18.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations will be added to the previously assigned points to attain final scores. The responsible Offeror whose proposal is most advantageous to the HSD, taking into consideration the evaluation factors in Section V, will be recommended for contract award as specified in Section II, Paragraph B.11. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A
ACKNOWLEDGEMENT of RECEIPT FORM

REQUESTS FOR PROPOSALS
Long Term Care Nurse Aide Competency Evaluation Program
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 H.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on 3/19/2012. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the HSD'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.

Elizabeth C. Cassel, Ph.D., Procurement Manager
Human Services Department, Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: 505- 827-7715 Fax Number: 505-827-7229
Elizabeth.cassel@state.nm.us

APPENDIX B

SAMPLE CONTRACT

STATE OF NEW MEXICO

**HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT**

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

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work

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

B. Performance Measures.

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

2. Compensation

A. The HSD shall pay to the Contractor in full payment for services satisfactorily performed [*at the rate of _____ dollars (\$_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.),*] such compensation not to exceed (AMOUNT) including gross receipts tax, if applicable. **This amount is a maximum and not a guarantee that the work assigned to be performed by the Contractor under this PSC shall equal the amount stated herein. The New Mexico gross receipts tax, if applicable, levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor is responsible for notifying the HSD when the services provided under this PSC reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this PSC being amended in writing prior to those services in excess of the total compensation amount being provided.**

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

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant

to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices **MUST BE** received by the HSD no later than ten (10) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID**.

(OR CHOICE – MULTI-YEAR)

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

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

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

C. The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within thirty (30) days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY DFA. This Agreement shall terminate on **DATE** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four (4) years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Agency's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Agency is the terminating party, or the

Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

B. **Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. **Appropriations**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. **Status of the Contractor**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency.

9. Release

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

10. Confidentiality

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

11. Product of Service -- Copyright

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

12. Conflict of Interest; Governmental Conduct Act

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

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

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a

member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. The Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. The Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, the Contractor learns that the Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that the Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for Violation of Law

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

16. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found not to be in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, the Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit

A. The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

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

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

D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

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

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

20. Indemnification

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage

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

B. The Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. The Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenemexico.state.nm.us/>.

22. Employee Pay Equity Reporting

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

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

23. Invalid Term or Condition

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

24. Enforcement of Agreement

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

25. Notices

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

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

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

26. Authority

If the Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of the Contractor represents and warrants that he or she has the power and authority to

bind the Contractor, and that no further action, resolution, or approval from the Contractor is necessary to enter into a binding contract.

27. Debarment and Suspension

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

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

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

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

C. As required by statute, regulation or requirement of this PSC, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of

the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

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

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

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

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

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

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

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of

not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

29. Non-Discrimination

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

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

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

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

30. Drug Free Workplace

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

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

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

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

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

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

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

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

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

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

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

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

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

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

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

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

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

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

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

31. Findings and Sanctions

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

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

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

32. Performance

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

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

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

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

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

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

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

33. Criminal/Civil Sanctions

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

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

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

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

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

34. Inspection

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

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

By: _____ Date: _____
Cabinet Secretary
Human Services Department

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

By: _____ Date: _____
Contractor

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

ID Number: **00-000000-00-0**

By: _____ Date: _____
Taxation and Revenue Department

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

By: _____ Date: _____
DFA Contracts Review Bureau

EXHIBIT A

SCOPE OF WORK

PERFORMANCE MEASURES

Through satisfactory completion of the Scope of Work set forth above and submission of acceptable Deliverables, the Contractor will assist the HSD to meet the portions of its Strategic Plan set forth below:

STRATEGIC PLAN

The Contractor is expected to be knowledgeable about the Human Service Department's objective to "using the state's Medicaid program as a platform for improving health care quality" and to work consistently in assisting the Division in the fulfillment of these goals through the services identified in this contract.

HUMAN SERVICES DEPARTMENT – STRATEGIC PLAN

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

Task 1.1: Modernizing the Medicaid Program

C. Ensure access to the right services at the right time and in the right place for all Medicaid recipients in a manner that avoids duplicative and unnecessary care.

SCOPE OF WORK

The CONTRACTOR shall be the sole testing agency for nurse aides employed in certified nursing facilities. The Contractor shall be responsible for providing the following:

A. SUMMARY

1. Development or utilization of standardized written, skills and oral performance-based examinations;
2. Managing nurse aide candidate applications;
3. Screening nurse aide candidate eligibility;
4. Scheduling and administering examinations;
5. Scoring, certifying and reporting examination results;
6. Managing computer-based test data;
7. Reporting test data to DOH, which is the agency responsible for the New Mexico Nurse Aide Registry;
8. Maintaining employment and in-service verification for biennial nurse aide recertification and for the New Mexico Nurse Aide Registry;

9. Developing all necessary forms and procedures for use in verifying the employment for nurse aides on the New Mexico Nurse Aide Registry;
10. Developing and implementing appropriate procedures for verifying in-service training and education for nurse aides.

B. SUMMARY DETAILS

1. Instrument Development Requirements:

The competency evaluation instrument must be designed to be valid, reliable, job-related and legally defensible. Content must cover the required curriculum in 42 C.F.R. § 483.152. All aspects of competency evaluation must meet the requirements of federal law and the federal regulations of the Centers for Medicare and Medicaid Services (CMS) pertaining to Nurse Aide Training and Competency Evaluation Programs (NATCEP), including but not limited to 42 U.S.C. §§ 1396b and 1396r and 42 C.F.R. §§ 431.120, 433.15, 483.75, and 483.150 to 483.160. The competency evaluations must also conform to state regulations on NATCEP in MAD 731. The Contractor shall take into consideration the literacy level, educational background and testing experience of the candidate population. Successful performance on the evaluation should not be dependent on the advanced reading skills of the candidate.

The written and oral examination shall be developed from a pool of test questions suitable for entry level nursing assistants. Only a portion of these will be used in any one examination. The Contractor shall develop a system that will maintain the integrity of the pool of questions and the individual examinations. The written and oral examinations must be offered at a minimum in English and Spanish.

The Contractor must offer an alternate method of examination for those nursing assistants with limited literacy skills. The oral examination shall include all content that is in the written examination, and there must also be a written portion on reading comprehension to determine competency to read job related information. For example, the aide must be able to read material such as a resident's name band, the contents of a bottle sitting on a bedside stand or a physician's orders.

The skills demonstration portion of the competency evaluation must consist of a minimum performance of five (5) tasks for each nursing assistant from a pool of evaluation items ranked according to degree of difficulty. The tester will make a random selection of tasks with at least one task from each degree of difficulty.

The skills demonstration portion of the competency evaluation must also evaluate the non-task oriented competency of the trainee in areas such as communication, safety and resident's rights. The skills demonstration portion of the competency evaluation will be held at the regional testing sites and must be administered by a registered nurse who meets the CMS requirements for a test examiner.

The Contractor must provide assistance to HSD in the event of a legal challenge related to Contractor's administration of the competency evaluation program. The Contractor shall be legally responsible for any and all lawsuits related to the evaluation process, the oral and written examinations identified herein, and the instruments in connection with the services performed under this Contract, as well as any debts incurred from such lawsuits.

2. Eligibility for Competency Evaluation:

Within four (4) months of employment, all persons working as nurse aides in New Mexico nursing facilities must successfully complete a state approved nurse aide training program and then schedule for a competency evaluation that shall consist of both a written or oral examination and skills demonstration.

A competency evaluation program must be made available to persons who have received nurse aide training in state approved nursing facility based nurse aide training programs, as well as non-nursing facility based training programs, i.e., as community colleges, vocational technical programs, and training programs (Attachment F to the RFP lists nursing facility based and non-nursing facility based qualified training programs for nurse aides.)

Although CMS allows the state to approve both non-state training programs and non-state competency evaluation programs, HSD has decided to establish one competency evaluation program for reasons of testing consistency and reimbursement efficiency. The Contractor must screen any nurse aide candidate for eligibility as follows:

- a. Proof of employment or commitment of employment in a certified nursing facility in order to be eligible for evaluation under this contract; or
- b. Documentation of completed, 75 hours of nurse aide training from a program approved by the state survey agency as meeting requirements for training programs; or
- c. Documentation by the training agency for nurse aide training completion or original state survey agency letter of approval to take the competency evaluation.

All test candidates will be allowed three (3) opportunities to successfully complete the examination. Failure after three attempts will require retraining to qualify for further testing opportunities.

3. Application for Competency Evaluation

The Contractor must print and distribute candidate study guides, information bulletins and test application material for prospective nurse aide candidates. The application materials will contain application forms, fee information, application and registration procedures, examination content outlines, and sample questions. Application materials will be subject to the approval of HSD and DOH.

The Contractor must establish a toll-free number to answer applicant questions and schedule evaluations.

The Contractor must certify that all properly requested evaluations and re-evaluations will be performed as required.

The Contractor must inform each applicant of the right to request in advance an alternative method of evaluation in lieu of the written test.

In advance of the competency evaluation, the Contractor shall give notice to each applicant that a record of his/her successful completion will be entered into the New Mexico Nurse Aide Registry.

The Contractor must provide plans to accommodate the special testing needs of physically challenged persons or any religious obligations which may preclude weekend test dates.

4. Test Schedules and Test Sites

The Contractor must organize and administer competency evaluations as often as necessary to meet the nursing facilities' competency evaluation needs but not more frequently than required. The Contractor's test scheduling plan shall be designed to minimize as much as possible the number of "no shows" for scheduled test dates and test sites. The Contractor is responsible for obtaining updated lists of certified nursing facilities qualified for nurse aide training. These lists may be obtained from the DOH.

5. Regional Test Sites and Staffing

The Contractor shall establish a minimum of ten (10) regional testing sites throughout the state based on need, pre-register nurse aide candidates, and conduct competency evaluations for the written, oral and skills demonstration components of the evaluation, including:

- a. Provision of testing staff including examiners, proctors and scoring capabilities.
- b. Provision of testing space that will include work surface for written tests, a computer terminal area for computer based testing, private space for oral evaluation and clinical settings for skills demonstration.
- c. Provision of testing equipment and supplies.

The Contractor must provide security measures to be followed at test sites, including procedures for handling suspected breaches of security.

6. Test Scoring

The Contractor must insure that test standardization and scoring of proctored exams is performed only by Contractor authorized staff. The Contractor shall notify HSD, the nursing facility and the applicant of competency evaluation results and shall notify unsuccessful candidates of their areas of test weakness to assist them in preparing for re-examination. The Department would prefer testing results be made available to applicants as soon after the exam as possible. Offerors should propose how they would accomplish this, including possible electronic scoring and response.

The Contractor must issue certificates of completion to each successful candidate of nurse aide competency evaluation.

7. Documentation and Reporting of Test Outcome Data

The Contractor must provide HSD and DOH with the following reports for each test date:

- a. Test registration rosters and results for each test date.
- b. Pass rates and pass/fail ratios by first time nurse aide candidates and other nurse aide candidates for each test date.
- c. Pass/fail performance by training site, by examiner and by skills demonstration item.

With the approval of HSD and DOH, the Contractor must develop and implement a data file for the storage and maintenance of candidate and examination data. The data will be used to monitor testing activities and support management decisions regarding test delivery and training needs.

8. Registry Data Reporting

The Contractor must establish, maintain, continuously update and make available for DOH access on an ongoing basis information required for DOH's NM Nurse Aide Registry including competency evaluation outcome data and copies of nurse aide certificates that DOH can print or download. Test data must be made available by the Contractor for DOH access within ten (10) working days of the examination.

The Contractor must provide database read access to the items listed in a. through o. to the DOH and/or other suitable means of transmission of the competency outcome data to the New Mexico Nurse Aide Registry.

The Contractor shall establish nurse aide registry data for each successfully certified nurse aide to include the following data:

- a. Individual's full name
- b. Home address

- c. Home phone number
- d. Date of birth
- e. Social Security Number
- f. Current employer and employer's Medicaid provider number
- g. Date of hire
- h. Date of employment termination
- i. Date competency evaluation successfully completed (dates for both written and skills tests)
- j. Certification number
- k. Most recent recertification data
- l. Nurse aide status on the registry
- m. Date of last update, and who updated it
- n. An active/inactive record designation
- o. Reciprocity/Endorsement from State of _____ (name of State from which reciprocity was granted)

To support registry services, the Contractor must provide database read and write access and data change capability to DOH to support reciprocity actions and training program maintenance.

The Contractor shall maintain daily back-ups for all information. The Contractor shall also make this information available for DOH access on an ongoing basis.

9. Services Related To Employment Verification

Current job verification information must be maintained on the Nurse Aide Registry database.

The Contractor must develop all necessary forms for use in verifying the employment for nurse aides on the Registry. Appropriate employment verification forms shall be included in the New Mexico Nurse Aide Handbook.

The Contractor must mail appropriate employment verification forms to all nursing facilities. The Contractor must also make the appropriate forms available via the Contractor's website. The Contractor must mail individual job verification forms to all nurse aides, for the purposes of recertification, which are currently on the New Mexico Nurse Aide Registry. The Contractor must issue documentation of job verification with an updated expiration date for those nurse aides who provide proof of employment.

The Contractor shall flag all nurse aides on the Nurse Aide Registry database who do not provide proof of employment during the prior twenty four (24) months. Certification notices will be mailed to all nurse aides 60 days prior to his/her twenty four (24) months employment period expiration date.

The Contractor shall provide an adequate supply of change of address forms to all

qualified nursing facilities for use by their nurse aide employees, and will add address changes received to the Nurse Aide Registry database

The Contractor shall provide on an ongoing basis DOH access to updated employment verification, testing and reciprocity actions for addition to the DOH maintained New Mexico Nurse Aide Registry.

10. Services Related to In-Service Education Verification

The Contractor shall collect information regarding nurse aide in-service hours offered in the past twenty four (24) months from nursing facilities. The Contractor will also provide a supply of two part forms for tracking in-service hours to each of these facilities. Representatives of nursing facilities will be instructed to submit a copy of this form to the Contractor each time an in-service program is offered to the nurse aide.

The Contractor shall enter information from these returned forms to the Nurse Aide Registry database record of each individual nurse aide. The Contractor shall provide the following information on an ongoing basis and in alphabetical order by nurse aide to DOH:

- a. Name
- b. Social Security Number
- c. Name of facility offering the in-service
- d. Total number of in-service education hours for the previous twelve (12) months

The Contractor will provide an alphabetical listing by facility of the total number of in-service education hours offered by each qualified nursing facility for nurse aides during the previous six (6) months. This information will be provided on an ongoing basis to DOH. In-service hours will be calculated by multiplying the hours offered times the number of aides attending.

C. DELIVERABLES

The Contractor shall provide the following deliverables to HSD or DOH, as applicable, in accordance with the schedule agreed upon between the Contractor and HSD.

1. A pool of written and oral test questions and a system for maintaining integrity of the questions.
2. Skills demonstration portion of the competency evaluation from a pool of evaluation tasks ranked according to difficulty and a system for maintaining integrity.
3. Explanation of how oral and written examinations and the skills demonstration are reliable and valid.
4. Eligibility criteria for competency evaluation.
5. Packet of study guides and application materials.

6. Proposed test schedules with test dates and locations.
7. Plan to mitigate as much as possible the number of monthly “no shows” on the part of candidates scheduled for test dates and sites.
8. Coordination and agreement with DOH to establish data file of certified facilities approved for examination site and exam proctoring.
9. Test site security policy and procedures.
10. Certification notice that includes, at a minimum, a letter describing the renewal process and employment verification form sent to the nurse aide at least sixty (60) days before the nurse aide lapses from the registry.
11. Test reporting format by test site and test date.
12. Registry data format.
13. Packet of registry support material.
14. Recertification plan.

APPENDIX C
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body.

This form must be filed even if the contract qualifies as a small purchase or a sole source contract.

The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____
Relation to Prospective Contractor: _____
Name of Applicable Public Official: _____
Date Contribution(s) Made: _____
Amount(s) of Contribution(s) _____
Nature of Contribution(s) _____
Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature Title (Position)

Date

—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 Title (Position)

Date

**APPENDIX D
COST PROPOSAL**

1. Budget Summary:

Must be completed by all Offerors to summarize the request for funds. Please remember to budget by year for all costs, from travel and other costs, material reproduction costs, printing, mailing, telephone costs, etc. The selected Offeror will be responsible for paying all expenses related to the scope of work for this RFP.

BUDGET ITEMS (LIST FOR EACH YEAR)	ESTIMATED BUDGET (LIST FOR EACH YEAR)
Developing standardized written, skills and oral performance-based examinations	
Administering examinations	
Scoring, certifying and reporting examinations	
Managing computer-based test data	
Reporting test data to DOH	
Material Reproduction/Printing/Typesetting/Graphic Design	
Meeting Rooms	
Postage	
Supplies and Materials	
Telephone and Fax	
Other Costs (specify)	
Other Costs (specify)	
State Gross Receipts Tax (on total contract award)	
Total Expenditures	\$
RECOMMENDED REGISTRATION FEE	

APPENDIX E

SUSPENSION AND DEBARMENT REQUIREMENT

CERTIFICATION REGARDING SUSPENSION, DEBARMENT, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS

The entering of a contract between HSD and the successful Offeror pursuant to this RFP is a “covered transaction,” as defined by 45 C.F.R. Part 76. HSD’s contract with the successor Offeror shall contain a provision relating to debarment, suspension, and responsibility substantially in the form contained in Article 39 of Attachment D. All Offerors must provide as a part of their proposals a certification to HSD in the form provided below. Failure of an Offeror to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render the Offeror non-responsible. Furthermore, the Offeror shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Although HSD may review the veracity of the certification through the use of the federal Excluded Parties Listing System or by other means, the certification provided by the Offeror in paragraph (a), below, is a material representation of fact upon which HSD will rely when making a contract award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to HSD, HSD may terminate the contract resulting from this request for proposals for default.

The certification provided by the Offeror in paragraph (a), below, will be considered in connection with a determination of the Offeror's responsibility. A certification that any of the items in paragraph (a), below, exists may result in rejection of the Offeror’s proposal for nonresponsibility and the withholding of an award under this RFP. If the Offeror’s certification indicates that that any of the items in paragraph (a), below, exists, the Offeror shall provide with its proposal a full written explanation of the specific basis for, and circumstances connected to, the item; the Offeror’s failure to provide such explanation will result in rejection of the Offeror’s proposal. If the Offeror’s certification indicates that that any of the items in paragraph (a), below, exists, HSD, in its sole discretion, may request, that the U.S. Department of Health and Human Services grant an exception under 45 C.F.R. §§ 76.120 and 76.305 if HSD believes that the procurement schedule so permits and an exception is applicable and warranted under the circumstances. In no event will HSD award a contract to an Offeror if the requested exception is not granted for the Offeror.

(a)(1) By signing and submitting a proposal in response to this RFP, the Offeror certifies, to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals-

- (A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency;
- (B) Have have not , within a three-year period preceding the date of the Offeror’s

proposal, 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;

- (C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this certification;
- (D) Have have not , within a three-year period preceding the date of Offeror’s proposal, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and
- (E) Have 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.

(ii) "Principal," for the purposes of this certification, shall have the meaning set forth in 45 C.F.R. § 76.995 and shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with Federal funds, who: is in a position to handle Federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(iii) For the purposes of this certification, the terms used in the certification, such as *covered transaction, debarred, excluded, exclusion, ineligible, ineligibility, participant, and person* have the meanings set forth in the definitions and coverage rules of 45 C.F.R. Part 76.

(iv) Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

OFFEROR: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

APPENDIX F**LISTING OF NURSING FACILITY-BASED AND NON-NURSING FACILITY-BASED
QUALIFIED TRAINING PROGRAMS FOR NURSE AIDES**

SCHOOL NAME	NEW MEXICO MAIL ADDRESS	CITY	ZIP
NM STATE UNIVERSITY-ALAMOGORDO,	2400 N. SCENIC DRIVE,	ALAMOGORDO	88311-0477
CENTRAL NM COMMUNITY COLLEGE,	525 BUENA VISTA SE,	ALBUQUERQUE	87106
PRINCETON PLACE,	500 LOUISIANA,	ALBUQUERQUE	87108
LAS PALOMAS NURSING & REHAB.	8100 PALOMAS AVE. NE,	ALBUQUERQUE	87109
UNIVERSAL CARE HOME HEALTH AGY.	8015 MOUNTAIN RD. NE,	ALBUQUERQUE	87110
ALBUQUERQUE PUBLIC SCHOOLS,	807 MOUNTAIN RD. NE,	ALBUQUERQUE	87102-2499
MANZANO DEL SOL,	5201 ROMA NE,	ALBUQUERQUE	87108-1334
ELIZABETH A. O'REILLY	P.O. BOX 614	ANGEL FIRE	87710
NM STATE UNIVERSITY-CARLSBAD	1500 UNIVERSITY DR.	CARLSBAD	88220
LAKEVIEW CHRISTIAN HOME HEALTH	1300 N. CANAL STREET	CARLSBAD	88220
CLAYTON NURSING & REHAB. CTR.	419 HARDING STREET	CLAYTON	88415
CLOVIS COMMUNITY COLLEGE	417 SCHEPPS BLVD.	CLOVIS	88101
DEMING HIGH SCHOOL	501 WEST FLORIDA	DEMING	88030
NORTHERN NM COMM. COLLEGE	921 PASEO DE ONATE	ESPANOLA	87532
ESPANOLA VALLEY NURS. & REHAB.	720 HACIENDA STREET	ESPANOLA	87532
LIFE CARE CENTER OF FARMINGTON	1101 WEST MURRAY DR.	FARMINGTON	87401
SAN JUAN COLLEGE	4601 COLLEGE BLVD.	FARMINGTON	87402
FORT BAYARD MEDICAL CENTER	P.O. BOX 36219	FT. BAYARD	88036
UNIVERSITY OF NM - GALLUP	200 COLLEGE ROAD	GALLUP	87301
NEW MEXICO JUNIOR COLLEGE	5317 LOVINGTON HWY.	HOBBS	88240
HOBBS HEALTH CARE CENTER	5715 LOVINGTON HWY.	HOBBS	88240
CASA DE ORO CARE CENTER	1005 LUJAN-HILL ROAD	LAS CRUCES	88005
VIDA ENCANTADA REHAB & NURSING 87701	2301 COLLINS DRIVE	LAS VEGAS	
LUNA COMMUNITY COLLEGE	366 LUNA DRIVE	LAS VEGAS	87701
UNIVERSITY OF NM - VALENCIA	280 LA ENTRADA	LOS LUNAS	87031
HEARTLAND CONTINUING CARE CTR.	1604 WEST 18TH ST.	PORTALES	88130
ROOSEVELT GENERAL HOSPITAL	P.O. DRAWER 868	PORTALES	88130
UNIVERSITY OF NEW MEXICO - TAOS	1157 COUNTY RD. 110	RANCHOS DE TAOS	87557
MINER'S COLFAX MEDICAL CTR - LTC	900 SOUTH SIXTH	RATON	

87740

RATON NURSING AND REHAB. CENTER	1660 HOSPITAL DRIVE	RATON	87740
ROSWELL JOB CORPS	57 G STREET	ROSWELL	
88202			
SUNSET VILLA CARE CENTER	1515 S. SUNSET AVE.	ROSWELL	
88203			
EASTERN NM UNIVERSITY-ROSWELL	P.O. BOX 6000	ROSWELL	88202-6000
EASTERN NM UNIV.-RUIDOSO HS	709 MECHEM DRIVE	RUIDOSO	
88345			
EASTERN NM UNIVERSITY-RUIDOSO	709 MECHEM DRIVE	RUIDOSO	88348
SANTA FE CARE CENTER	635 HARKLE ROAD	SANTA FE	87505
SANTA FE COMMUNITY COLLEGE	6401 RICHARD AVENUE	SANTA FE	87508
ANAMARC EDUCATION INSTITUTE	2660 AIRPORT RD. STE 780	SANTA TERESA	88008
EMERALD NURS. SCHL-SANTA TERESA	1074 CTRY CLUB STE B-3	SANTA TERESA	88008
WESTERN NEW MEXICO UNIVERSITY	P.O. BOX 680	SILVER CITY	
88062			
SOCORRO GOOD SAMARITAN VILLAGE	P.O. BOX 1279	SOCORRO	87801-1279
SIERRA HOME HEALTH AND HOSPICE	1400 N. SILVER	T OR C	87901
DR. DAN C. TRIGG MEMORIAL HOSP.	301 E. MIEL DE LUNA AVE.	TUCUMCARI	
88401			

APPENDIX G**TESTS AND CERTIFICATIONS FOR CALENDAR YEARS
2008 through 2011**

For the 2011 calendar year, HSD paid for the following number of nurse aide tests, recertifications and no-shows:

<u>Skills Test</u>	<u>Written Test</u>	<u>Oral Test</u>	<u>Recert.</u>	<u>No Show</u>
371	403	26	1,555	130

For the 2010 calendar year, HSD paid for the following number of nurse aide tests, recertifications and no-shows:

<u>Skills Test</u>	<u>Written Test</u>	<u>Oral Test</u>	<u>Recert.</u>	<u>No Show</u>
624	539	25	1,606	204

For the 2009 calendar year, HSD paid for the following number of nurse aide tests, recertifications and no-shows:

<u>Skills Test</u>	<u>Written Test</u>	<u>Oral Test</u>	<u>Recert.</u>	<u>No Show</u>
700	663	25	1,384	274

For the 2008 calendar year, HSD paid for the following number of nurse aide tests, recertifications and no-shows:

<u>Skills Test</u>	<u>Written Test</u>	<u>Oral Test</u>	<u>Recert.</u>	<u>No Show</u>
745	683	34	1,489	323

APPENDIX H

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:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. 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://insurenemexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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, depending on the dollar value threshold in effect at that time.

I have read and agreed to abide by the conditions required by the New Mexico Employees Health Coverage requirement.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____