



# Las Cruces Public Schools

Going Above and Beyond for Every Student, Every Day

## Las Cruces Public Schools District

### Formal Quotation Request

### Superintendent Search Consultant Services

Quotation FQR No: 22-23-03Q

**Project Name:** Superintendent Search Consultant Services

## 1. STATUTORY AUTHORITY

- 1.1 This procurement is conducted in accordance with Chapter 13, NMSA 1978 and purchasing regulations as adopted by the LCPS. See Sections 13-1-91, 13-1-120, 13-1-125, and 13-1-129 NMSA 1978.

## 2. GENERAL DESCRIPTION AND SCOPE OF WORK

- 2.1. The Las Cruces Public Schools (LCPS) Board of Education is requesting quotes from qualified offerors for Superintendent search consultant services. By the authority of the procurement Code as stipulated and defined in NMSA 13-1-1 – 13-1-199 may procurement issue small purchase orders and enter into existing contracts based on written determination by the chief procurement officer.

- 2.2. The District Background Information:

Las Cruces Public Schools is located 45 miles north of the US-Mexico border in Las Cruces, New Mexico. With approximately 23,000 students and 4,600 employees, LCPS is the second largest school district in New Mexico.

LCPS serves a diverse population of approximately 91,000 people throughout the City of Las Cruces, the Town of Mesilla, the Village of Doña Ana, and White Sands Missile Range, and the middle third of Doña Ana County. The city's largest employers include: New Mexico State University, White Sands Missile Range, Las Cruces Public Schools, and the City of Las Cruces.

The district has 40 schools: 24 elementary schools (pre-kindergarten-5th); one combined elementary and middle school (K-8th); eight middle schools (6th-8th); and seven high schools (9th-12th). Two of the

seven high schools are early college high schools and are located on the campus of New Mexico State University. LCPS also has a Virtual Learning Academy, serving elementary through high school students.

An elected Board of Education composed of five members serving staggered terms of four years each governs the Superintendent and District properties.

- 2.3. It is the intent of the Board of Education to appropriate reasonable funding based on review of quotation(s) received for the project described at **Exhibit A, Scope of Work**.
- 2.4. The Board of Education intends on entering into a single contract with a selected Offeror, for a term of no more *than the estimated time proposed by the offeror in proposal* response meeting the *establish timeline proposed by the Owner upon mutual consensus*.

### **3. EVALUATION CRITERIA**

- 3.1. While this is an informal solicitation, the offeror(s) must prepare and submit a brief proposal addressing each of the criteria listed below. Proposal(s) will be reviewed and evaluated based upon the submissions closely meeting the Board of Education's requirements. Selection will not be based solely on cost. An offeror must provide evidence of their ability to complete the scope of work and experience in completing similar works of nature.
- 3.2. Offeror(s) must provide current business and organizational information. This information shall include, but is not limited to, the company size, organizational structure, date of incorporation, ownership, number of years in business, home office location, and other appropriate information.
- 3.3. Offeror's must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations/controls and project administration requirements. Indicate the relationship of the work in this solicitation to your current projects. Demonstrate or indicate project team organization and working relationships.
- 3.4. Offeror's must identify their past record of performance on works of this nature. Please provide at least three (3) client references. The minimum information that must be provided about each reference is:
  1. Name of individual or company services were provided for
  2. Address of individual or company
  3. Name of contact person, email and phone numbers
  4. Type of services provided and dates services were provided
- 3.5. Offeror(s) must provide a thorough narrative describing the approach the offeror will use to accomplish the Scope of Work. Milestone charts may be used to describe the tasks to be performed, the time frame for each task and the proposed staff member, including subcontractors, designated for the completion of each task. Whether a milestone chart is used

or not, the Offeror should clearly explain his/her approach to fulfilling the Scope of Work.

- 3.6. Offeror(s) must complete the Cost Response Form (Appendix A) and submit it with the proposal.
- 3.7. Offeror(s) shall propose a offeror, fixed, fully loaded lump sum cost proposal. The firm, fixed, fully-loaded lump sum cost proposal will include travel to and from the off-site workplace to the on-site workplace, if applicable.
- 3.8. The Cost Proposal shall include applicable New Mexico Gross Receipts tax in a separate line item.
- 3.9. Cost Proposals, shall not exceed \$50,000.00, pre-tax. Any cost proposal exceeding this amount will be disqualified from consideration.
- 3.10. The Cost Proposal shall be valid for sixty (15) days subject to all action by the Owners.

#### **4. PROPOSAL FORMAT**

4.1. All proposals must *be emailed to the Procurement Manager in a PDF format*, typewritten on standard 8 1/2 x 11 pages, with tabs delineating each section. Offeror(s) must limit their proposals to ten (10) pages. (Appendix B, Campaign Contribution Disclosure Form is not included in the ten-page limit).

4.1.1. Proposal Organization:

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

1. Letter of Transmittal
2. Response to Evaluation Criteria
3. Cost Response Form

Within each section of the proposal, Offeror(s) shall address the items in the order in which they appear in this request. Any proposal that does not adhere to these requirements may be rejected.

4.1.2. Letter of Transmittal

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

1. Identify the submitting organization or individual;

2. Identify the name and title of the person authorized by the organization to contractually obligate the organization;
3. Identify the name, title telephone number, and email of the person authorized to negotiate the contract on behalf of the organization;
4. Identify the names, titles and telephone numbers, and email of persons to be contacted for clarification;
5. Signed by the person authorized to contractually obligate the organization;

4.1.3. Insurances (If selected, contractor may be requested to provide proof of the following insurance policies):

- 4.1.3.1. Provide proof of existing Errors and Omissions insurance for \$500,000 in the form of a current Certificate of Insurance and state that will maintain in force during the entire term of the Agreement, the following insurance coverage(s), naming the OWNER as an additional insured.
- 4.1.3.2. Workers Compensation (including accident and disease coverage) at the statutory limit. Employer's liability: \$100,000.
- 4.1.3.3. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Offeror will assume under the Agreement. Limits shall not be less than the following:
  1. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
  2. Property damage or combined single limit coverage: \$1,000,000.
  3. Automobile liability (including non-owned automobile coverage): \$1,000,000.
  4. Umbrella: \$1,000,000.
- 4.1.3.4. Errors and Omissions: \$500,000.

4.1.4. Campaign Disclosure Form (Appendix B).

4.1.5. Debarment Form (Appendix D).

4.1.6. Number of Proposals

Each Offeror shall submit only one (1) proposal via electronic email to the procurement manger by the deadline date and time specified below.

- 4.2. The Board of Education reserves the right to reject any and all proposals in part or in whole. The District's Procurement Manager must receive proposal no later than **12:00 P.M.** (Mountain Standard Time), on **April 7<sup>th</sup>, 2023**. Please email proposals to:
  - **Mr. Cesar Chavez, Procurement Manager**
  - **Email: [cchavez3@lcps.net](mailto:cchavez3@lcps.net)**

If you have any questions related to this request, please email questions to the Procurement Manager above.

## Superintendent Search Consultant Services

1. The primary responsibility of the Search Consultant will be to serve as the primary point of contact to the Board for all matters related to the Superintendent search, following the 140 Days Search Plan adopted by the Board at the March 28, 2023 meeting.
2. The Search Consultant must be available on April 11, 2023, at 4:00 p.m. via Zoom for a five-minute introduction to the Board of Education at their scheduled work session. The selected Consultant must also be available to meet on April 12, 2023 at 5:30 p.m. via Zoom with the Superintendent Search Advisory Committee.
3. The Board shall establish a Superintendent Search Advisory Committee consisting of five categories of constituents internal to the district and four categories of constituents external to the district. The Superintendent Search Advisory Committee, working with the Search Consultant, shall advise the Board on two important issues related to the search: the criteria desired in a new Superintendent, and to generate interview questions from the stakeholder perspective to be asked of the finalists in a Facilitated Public Forum.
4. The Search Consultant shall continue meeting with the Superintendent Search Advisory Committee to identify and clarify, from the Committee's perspective, the desired characteristics the new Superintendent shall possess. The Search Consultant shall interview each Board member concerning his or her perceptions of the desired characteristics the new Superintendent shall possess. The Search Consultant shall work with the LCPS Human Resources Department to compile a draft of these criteria in the form of an advertisement outlining minimum requirements, desired characteristics, and a salary range for consideration and approval by the Board at its meeting on April 25, 2023.
5. How would you identify the attributes needed for the next LCPS Superintendent? Describe your use of a community survey, in-person and online focus groups, one-on-one interviews with Board members, etc. How do you report these findings to the Board.
6. How will you engage community stakeholders in the search process? How will you determine if the community engagement process has been successful?
7. How does your search process value and promote diversity, equity, and inclusion? Describe your experience and successes recruiting a high-quality applicant pool that includes candidates from diverse backgrounds. Provide examples of where your recruits come from.
8. How will you incorporate the ideas, vision, and needs of the Board? How will you identify the unique leadership needs of LCPS and communicate them to the Board for consideration in the search process? How will you help the Board gain consensus about the candidates to be considered?
9. Describe how you maintain confidentiality throughout the search process.
10. How will you present information to the Board and keep the Board informed throughout the search process? How will you collaborate with the Board throughout the search process?

**\*Disclaimer: The Board of Education reserves the right to adjust the Scope of Work as needed throughout the term of the contract.**

### **Appendix A Cost Response Form**

Offeror(s) must complete this Cost Response Form and submit it with the proposal.

Offeror(s) shall propose a firm, fixed, fully loaded lump sum cost proposal. The firm, fixed, fully-loaded lump sum cost proposal will include travel to and from the off-site workplace to the on-site workplace, if applicable.

The Cost Proposal shall include applicable New Mexico Gross Receipts tax in the separate line item below.

Cost Proposals, shall not exceed \$50,000.00, pre-tax. Any cost proposal exceeding this amount will be disqualified from consideration.

The Cost Proposal shall be valid for sixty (15) days subject to all action by the Owners.

<b>Firm, Fixed, Fully-loaded Lump Sum Cost Proposal:</b>	<b>\$</b>
<b>New Mexico Gross Receipts Tax:</b>	<b>\$</b>
<b>Grand Total:</b>	<b>\$</b>

## **Appendix B Campaign Contribution Disclosure**

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

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

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

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

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

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

“**Pendency of the procurement process**” means the time 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) \_\_\_\_\_

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)

– OR –

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

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)

\_\_\_\_\_  
Offeror Business Name



**Appendix C**  
**Sample Agreement**  
**Las Cruces Public Schools District**

**Agreement No.** \_\_\_\_\_

THIS Agreement (“Agreement”) is made by and between the [Las Cruces Public schools] hereinafter referred to as the “Owner” and [contractor name] hereinafter referred to as the “Contractor” and collectively referred to as the “Parties.”

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

**1. Scope of Work**

- 1.1. The Contractor shall perform the work as described in Exhibit A, the terms and provisions of which are incorporated herein by reference.

**2. Compensation**

- 2.1. The Contractor shall be compensated in full payment for services satisfactorily performed based upon deliverables, such compensation not to exceed [\$], excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling [\$] shall be paid by Owner to the Contractor.
  - 2.1.1. The total amount payable to the Contractor under this Agreement, including gross receipts tax, at the rate of percentage shall not exceed [\$XXX]. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Owner when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.
- 2.2. Payment shall be made upon acceptance of each deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of acceptance. All Payment Invoices MUST BE received by OWNER no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

2.3. The Contractor shall be reimbursed by OWNER for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification Number. Contractor and all subcontractors shall pay all Federal, state and local taxes Applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold OWNER harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

### **3. Term**

3.1. Services of the Contractor shall commence on the date of the final execution of this Agreement and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement; provided, however, that in any event, all of the Services required hereunder shall be completed within [state term, example One-Hundred and Twenty (120) days] of the date of execution of this Agreement. OWNER reserve the right to renew the Agreement through a written amendment signed by all required signatories, but in any case the Agreement shall not exceed the total number of years allowed pursuant to NMSA 1978, § 13-1-150.

### **4. Termination**

4.1. Grounds. OWNER may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon OWNER uncured, material breach of this Agreement.

4.2. Notice. OWNER Opportunity to Cure.

4.2.1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, OWNER shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

4.2.2. Contractor shall give OWNER written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all OWNER 's material breaches of this Agreement upon which the termination is based and (ii) state what OWNER must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if OWNER does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, OWNER does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

4.2.3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by OWNER ; (ii) if, during the term of this

Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

- 4.3. Liability. Except as otherwise expressly allowed or provided under this Agreement, OWNER 's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; 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. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OWNER 'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

## **5. Appropriations**

- 5.1. 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 OWNER to the Contractor. OWNER's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If OWNER propose 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 Contractor**

- 6.1. The Contractor and its agents and employees are independent contractors performing professional or general services for OWNER 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. Product of Service – Copyright**

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

## **8. Conflict of Interest; Governmental Conduct Act**

- 8.1. 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.

- 8.2. 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 any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:
- 8.2.1. in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any OWNER employee while such employee was or is employed by OWNER and participating directly or indirectly in OWNER 's contracting process;
  - 8.2.2. this Agreement complies with NMSA 1978, § 10-16-7(A) 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 NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
  - 8.2.3. in accordance with NMSA 1978, § 10-16-8(A), (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 OWNER 's making this Agreement;
  - 8.2.4. this Agreement complies with NMSA 1978, § 10-16-9(A) 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 NMSA 1978, § 10-16-7(A), 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;
  - 8.2.5. in accordance with NMSA 1978, § 10-16-13, 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
  - 8.2.6. In accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, 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 OWNER.

8.3. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which OWNER relied when the Parties entered into this Agreement. Contractor shall provide immediate written notice to OWNER if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause 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 Contractor's representations and warranties in paragraphs A and B of this Clause 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 OWNER and notwithstanding anything in the Agreement to the contrary, OWNER may immediately terminate the Agreement.

8.4. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

## **9. Confidentiality**

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

## **10. Amendment**

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

10.2. If OWNER propose 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 the Terminations Clause of this Agreement, or to agree to the reduced funding.

## **11. Merger**

11.1. 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.

## **12. Penalties for Violation of Law**

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

### **13. Equal Opportunity Compliance**

13.1. 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 Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

### **14. Workers Compensation**

14.1. The Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, OWNER may terminate this Agreement.

### **15. Applicable Law**

15.1. 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 NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

### **16. Records and Financial Audit**

16.1. 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 three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by OWNER, the Department of Finance and Administration and the State Auditor. OWNER shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of OWNER to recover excessive or illegal payments.

### **17. Indemnification**

17.1. The Contractor shall defend, indemnify and hold harmless OWNER 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 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 performed 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 OWNER and the Risk Management Division of the New Mexico General Services Department by certified mail.

## **18. New Mexico Employees Health Coverage**

- 18.1. 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 this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- 18.2. 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.
- 18.3. 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/>.

## **19. Invalid Term or Condition**

- 19.1. 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 three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by OWNER, the Department of Finance and Administration and the State Auditor. OWNER shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of OWNER to recover excessive or illegal payments.

## **20. Indemnification**

- 20.1. The Contractor shall defend, indemnify and hold harmless OWNER 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 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 performed 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 OWNER and the Risk Management Division of the New Mexico General Services Department by certified mail.

## **21. Invalid Term or Condition**

21.1. 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.

## **22. Enforcement of Agreement**

22.1. 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.

## **23. Non-Collusion**

23.1. In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the OWNER.

## **24. Notices**

24.1. 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; OWNER

To: Contractor

## **25. Default/Breach**

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

## **26. Insurance**

26.1. Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the OWNER as an additional insured.

26.2. Workers Compensation (including accident and disease coverage) at the statutory limit.  
Employer's liability: \$100,000.

26.3. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:



- 26.3.1 Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- 26.3.2 Property damage or combined single limit coverage: \$1,000,000.
- 26.3.3 Automobile liability (including non-owned automobile coverage): \$1,000,000.
- 26.3.4 Umbrella: \$1,000,000.

26.4. Contractor shall maintain the above insurance for the term of this Agreement and name the OWNER as an additional insured and provide for 30 days' cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

## **27. Equitable Remedies**

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

## **28. Assignment**

28.1. 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 OWNER.

## **29. Subcontracting**

29.1. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the OWNER. 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 OWNER.

## **30. Commercial Warranty**

30.1. The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

## **31. Release**

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

### **32. Contractor Personnel**

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

Name:

Name:

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

### **33. Inspection of Services**

33.1. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

33.2. The Contractor shall provide and maintain an inspection system acceptable to the OWNER or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the OWNER Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

33.3. The OWNER or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The OWNER Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

33.4. If the OWNER Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

33.5. If any part of the services does not conform to the requirements of this Agreement, the OWNER Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the OWNER Agent or other party to this Agreement may:

33.5.1.1. require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and

33.5.1.2. reduce the Agreement price to reflect the reduced value of the services performed.

33.6. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the OWNER Agent or other party to this Agreement may:

33.6.1. by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or

33.6.2. terminate the Agreement for default.

33.7. THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE EITHER THE OWNER OR CO-OWNERS'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

#### **34. Authority**

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.

**CONTRACTOR**

By: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

CONTRACTOR NM TAX ID Number: \_\_\_\_\_

**OWNER**

By: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_

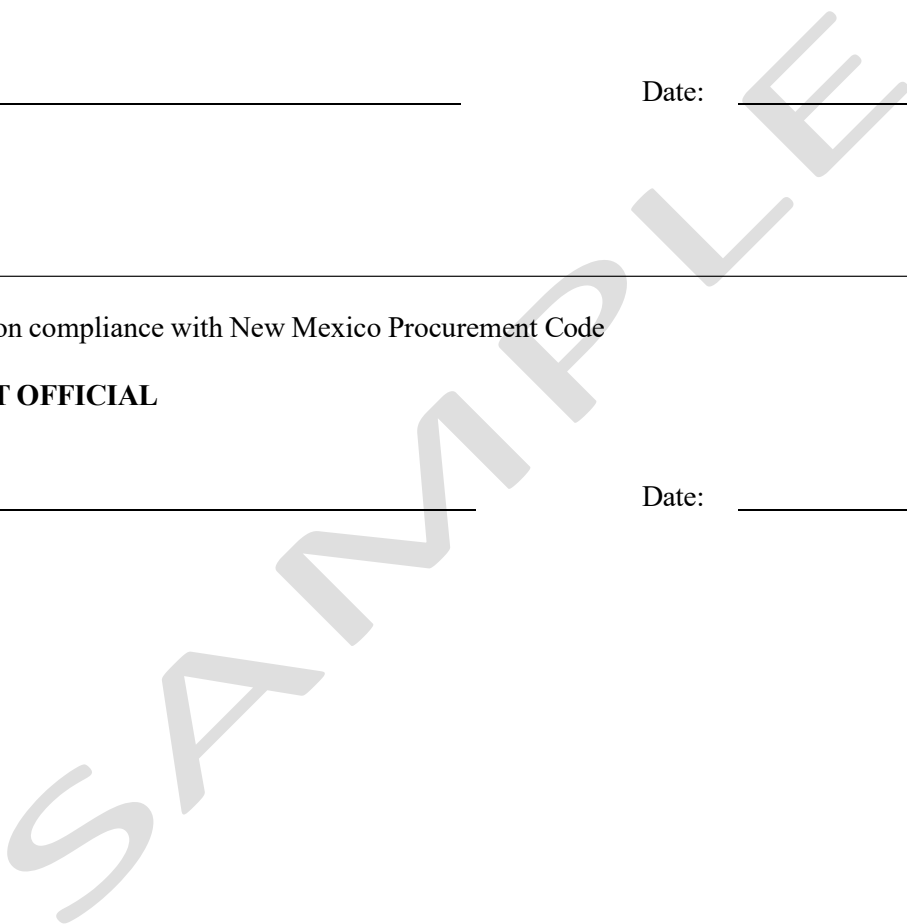
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Certification compliance with New Mexico Procurement Code

**PROCUREMENT OFFICIAL**

By: \_\_\_\_\_  
[Title]

Date: \_\_\_\_\_



Appendix D

Debarment Form



Subject: Certification

As a potential vendor/contractor awardee to the Las Cruces Public School District, you are required to provide debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form. Please return the completed form with your solicitation submittal.

**DEBARMENT:**

*Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all vendors/contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.*

---

I hereby certify that my company listed below and its principles, have not been debarred, suspended, proposed for debarment, declared ineligible are not in the process of being debarred, or are voluntarily excluded from conducting business with a federal department, an agency of the federal government, or the State of New Mexico.

COMPANY NAME: \_\_\_\_\_

COMPANY ADDRESS: \_\_\_\_\_

COMPANY CITY/STATE/ZIP: \_\_\_\_\_

COMPANY PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

COMPANY UNIQUE ENTITY ID NO: \_\_\_\_\_

---

NAME AND SIGNATURE OF COMPANY REPRESENTATIVE AUTHORIZED TO CERTIFY THE ABOVE:

PRINTED NAME OF REPRESENTATIVE: \_\_\_\_\_

SIGNATURE OF REPRESENTATIVE: \_\_\_\_\_

Date

If you have any questions, please contact me at (575)527-5845.

Sincerely,

Cesar Chavez, CPO  
Associate Director of Purchasing  
Las Cruces Public Schools