

**Albuquerque Public Schools  
on behalf of**

**The Interagency Benefits Advisory Council (IBAC):**

Albuquerque Public Schools (APS), New Mexico Public Schools Insurance Authority (NMPSIA),  
New Mexico Retiree Health Care Authority (NMRHCA), and  
State of New Mexico Risk Management Division (SONM)

**Request for Proposal**

**RFP 20-014MG**

**IBAC Benefits: Medical, Dental, Vision, Employee Assistance Program (EAP)  
& Medicare Programs**

**RFP Schedule**

Action	Date & Time
RFP Issued	10/28/2019
Populations and Plan Data Attachment Posted	11/4/2019
Deadline for Acknowledgement of Receipt Form	11/7/2019
Pre-proposal Meeting and Location	11/13/2019 at 10:00 AM Albuquerque Public Schools, 6400 Uptown Blvd NE Rio Bonito Room, West Tower 1 <sup>st</sup> Floor Albuquerque, New Mexico
Deadline for Questions	11/18/2019 @ 5:00pm (local time)
RFP Due Date and Time	12/10/2019 @ 3:00pm (local time)
<b><i>Proposals must be received by the due date and time. No late proposals will be accepted. The only acceptable evidence to establish the time of receipt is the date/time stamp imprint from the APS Procurement bid clock.</i></b>	
Evaluation of Proposals	TBD
Finalist Interviews/Best and Final Offers	TBD
Contract Negotiations	TBD

**RFP Buyer Contact Information**

<b>Name</b>	Marilee P. Gallacher
<b>Phone Number</b>	505-878-6118
<b>E-Mail</b>	Marilee.Gallacher@aps.edu
<i>Any inquiries or requests regarding clarification of this RFP document shall be submitted to the buyer in writing. Offerors may contact ONLY the buyer regarding the terminology stated in the procurement documents.</i>	

**RFP Submittal Location**

<b>Physical Address (No USPS Mail*) For Walk-in Delivery or Carrier Service (UPS, FedEx, etc.)</b>	<b>USPS Mailing Address Allow 5 additional business days for APS internal delivery</b>
Albuquerque Public Schools ATTN: Procurement Department 6400 Uptown Blvd. NE, Suite 500E Albuquerque, NM 87110	Albuquerque Public Schools ATTN: Procurement Department, City Center, Suite 500E P.O. Box 25704 Albuquerque, NM 87124-0704

**Continued on Page 2**

Ensure that the following RFP information is clearly labeled on the **sealed package** containing the RFP submission. **Please note: if the sealed proposal is placed inside a carrier envelope or package for shipping, all of this information must be re-written and clearly visible on the outermost envelope or package containing the sealed proposal:**

- Offeror's **Business Name** (not an individual's name)
- RFP Number & Title
- RFP Due Date & Time

**\*APS does not have a mailbox on site. US Postal Service Mail is accepted only at the PO Box address. If a letter or parcel is mailed via the USPS to the APS physical address, it will NOT reach our office.**

### **RFP Term**

APS reserves the right to enter into a four (4) year contract with the respective awarded Offerors.

NMPSIA reserves the right to enter into a one (1) year contract with the respective awarded Offerors, with the option of three (3) one year (1-year) contract renewals, not to exceed a total of four (4) years.

NMRHCA reserves the right to enter into a one (1) year contract with the respective awarded Offerors, with the option of three (3) one year (1-year) contract renewals, not to exceed a total of four (4) years.

SONM reserves the right to enter into a one (1) year contract with the respective awarded Offerors, with the option of three (3) one year (1-year) contract renewals, not to exceed a total of four (4) years.

# TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b>	<b>PAGE #</b>
OFFEROR'S GENERAL INSTRUCTIONS	4
TERMS AND CONDITIONS	9
PROTESTS	13
SCOPE OF WORK	14
OVERVIEW	15
RFP SCHEDULE	20
EVALUATION CRITERIA	22
SUBMITTAL REQUIREMENTS	24
PRICE PROPOSAL	25
FORMS AND ATTACHMENTS	27
SAMPLE CONTRACTS	30
COMPLIANCE	61
PROPOSAL CHECKLIST	66

# **OFFEROR'S GENERAL INSTRUCTIONS**

1. **READ ALL DOCUMENTS:** Offerors must familiarize themselves with all documents contained herein; it is mandatory that all submitted offers be in compliance with all the provisions contained in the Request for Proposal. Offerors should promptly notify the Buyer of any ambiguity, inconsistency, error, or missing attachments which they may discover upon examination of the RFP.
2. **OFFICIAL CONTACT:** Offerors may contact **ONLY** the Buyer regarding the terminology stated in the procurement documents. Other IBAC agencies' employees do not have the authority to respond on behalf of The IBAC.  
  
Offerors **MAY NOT** contact other IBAC agencies, employees or the evaluation committee. Any contact with an IBAC agency, employee or evaluation committee may result in rejection of any proposal.  
  
Any other verbal communication will be deemed unofficial and non-binding. Communication directed to parties other than the Buyer will have no legal bearing on this RFP or the resulting contract(s). Any response made by APS on behalf of The IBAC will be provided in writing to all Offerors by addendum; no verbal responses shall be authoritative.
3. **WRITTEN QUESTIONS:** Potential Offerors may submit written questions to the Buyer as to the intent or clarity of this RFP. All written questions must be addressed and submitted to the Buyer **NO LATER** than the date and time specified in this RFP. All times are subject to the local time zone. The Buyer will respond in a timely manner subject to the complexity of the questions. Buyer will **ONLY** respond to the written questions submitted and receive on or prior to the deadline in this RFP.
4. **SUBMISSION:** The submission of a proposal constitutes a representation by the Offeror that the Offeror has made all appropriate examinations, investigations, and analysis and has made provision as to the cost thereof in submitted proposal. By responding to this RFP, Offerors acknowledge and agree to the terms and conditions set forth in this RFP.
5. **ELECTRONIC RFP DOCUMENTS:** This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by APS on behalf of The IBAC, the Offeror acknowledges that the version maintained by APS shall govern.
6. **INCURRING COSTS:** Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. If applicable, any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.
7. **PROPOSAL OFFER FIRM:** Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after due date. If a best and final offer is requested, the offer is good for ninety (90) days after receipt of best and final offer. If more time is required for contract negotiations, these date terms may be extended upon agreement of agencies and prospective vendor(s).
8. **FORMS AND ATTACHMENTS:** It is the responsibility of every Offeror to ensure they have downloaded the latest version of each RFP, including any addendum(s) which may have been issued and posted on the APS Procurement Department Website.
9. **ADDENDUM(S):** No Addendum will be issued later than **FIVE (5)** days prior to the date for receipt of proposals, except an Addendum withdrawing the RFP or one which extends the date for receipt of proposals.  
  
Offerors should revisit the website (<http://www.aps.edu/procurement>), then select, "See Current Bids and RFPs") prior to the due date before submitting their proposal to Albuquerque Public Schools. All addendums should be acknowledged in the submitted proposal.
10. **CORRECTIONS:** Corrections shall be initialed in ink by the Offeror signing the 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 to withdraw their proposal. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

11. **EXCEPTIONS:** Any exceptions to the scope of work and/or specifications shall be listed separately in the submitted proposal and unless otherwise stated, specifications and/or scope of work attached are the minimum requirements. Minor deviations to the specifications as listed, may be considered.

The Buyer, after review of the proposals may request clarifications on information submitted by any and all Offerors in a written format, with a specified deadline for response.

12. **DISTRICT DISCRETION:** APS reserves the right, on behalf of The IBAC, pursuant NMSA 1978, §13-1-132, in its sole discretion to waive minor irregularities in proposals submitted provided that such irregularities have no effect on price, quality, quantity or any matter to be evaluated in making a selection and confer no material advantage on the Offeror whose nonconformity is waived.

13. **BRAND NAMES:** Where a brand-name or equal specification is used in a solicitation, the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. If a vendor proposes an “equal” to scope of work/specifications, The IBAC is the sole interpreter of the scope of work/specifications and sole judge as to whether the “equal” proposed complies with the scope of work/specifications.

14. **OFFEROR QUALIFICATIONS:** The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirement specified within this RFP. The Evaluation Committee may reject the proposal of any potential Offeror who is deemed not to be a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, §13-1-83 and §13-1-85.

15. **AWARD:** Each IBAC agency reserves the right to award all, part or none of the Scope of Work set forth in this RFP for each benefits category. This procurement in no manner obligates Albuquerque Public Schools (APS), New Mexico Public Schools Insurance Authority (NMPSIA), New Mexico Retiree Health Care Authority (NMRHCA), or the State of New Mexico Risk Management Division (SONM), until a valid signed contract with each IBAC agency is executed.

16. **PREFERENCES:** Offerors may be awarded preferences in compliance with NMSA 1978, §13-1-21 for New Mexico In-State Resident Business and Resident Veteran Business. Offerors shall include in their proposal a copy of the certificate issued by State of New Mexico Taxation & Revenue Department. If the Proposal is a Joint Venture, Offeror shall state in the submitted offer the percentage of work that will be performed by Resident Business and/or Resident Veteran Business. **PLEASE NOTE: An Offeror cannot be awarded both a resident preference and a resident veteran business preference. The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.**

17. **TIMELY SUBMISSIONS:** All Offeror proposals must be received for review and evaluation no later than the time and date specified in this RFP. Time is subject to local time. Albuquerque Public Schools, on behalf of The IBAC, does not accept proposals electronically, by fax, or email. **A hardcopy with an original signature MUST be submitted.**

It is the Offeror’s responsibility to ensure the proposal arrives before the due date and time. Offerors are cautioned that “late is late”. It is the responsibility of the Offerors to allow sufficient time for the hazards such as traffic, weather, parking, locating the proper office, third party delivery, US Postal Service mail delivery, etc. Any and all proposals not received by the proposal submission due date and time shall be rejected. No late proposals will be accepted under any circumstances, not even if the delivery service is late or at fault. It is recommended to send your proposal early.

APS may, under the direction of The IBAC, extend the time for the submission of proposals upon a finding that it is in the interest of The IBAC to do so. Such extensions shall be by addendum(s) to this RFP, which may be issued before the submission due date.

18. **RFP CANCELLATION OR REJECTION:** In accordance with NMSA 1978, §13-1-131, this RFP may be canceled or proposals may be rejected in whole or in part when it is in the best interest of The IBAC.
19. **RFP OPENING:** Submitted proposals shall not be publicly opened. The contents of the proposals shall not be disclosed during any negotiations that may occur. A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, §13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required IBAC agency signature(s) on the contract(s) resulting from the procurement has been obtained.
20. **RESPONSIBLE AND RESPONSIVE OFFER:** APS Procurement may reject the proposal of any potential Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, §13-1-83 and §13-1-85.
21. **SOLE RESPONSE:** Any sole response that is received may be rejected by APS, under the direction of The IBAC, depending on available competition and timely needs of The IBAC agencies. The IBAC reserves the right to award the contract to the responsible Offeror which has submitted responsive proposals most advantageous and in the best interest of The IBAC agencies.
22. **NEGOTIATIONS:** Each IBAC agency reserves the right to discontinue negotiations with any Offeror.
23. **MULTI-AWARD:** The IBAC reserves the right to make multiple awards based on this RFP as necessary for adequate delivery or service in accordance with NMSA 1978, §13-1-153.
24. **AFTER AWARD:** After the final contracts are negotiated, approved and awarded, all proposal documents pertaining to this procurement will be open to the public, except for the material which is proprietary or confidential. The Procurement Department 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 trade secret in accordance with the Uniform Trade Act, NMSA 1978, §57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.
25. **ASSIGNMENT:** It is mutually understood and agreed that the successful Offeror(s) shall not assign, transfer, convey, sublet or otherwise dispose of the purchase order, contract, or his/her right, title of interest therein, or power to execute such purchase order or contract to any other person, company or corporation without the previous written consent of the respective IBAC agency.
26. **GOVERNING BODY APPROVAL:** The award of this contract is not final until approved by the governing bodies (if applicable) and/or the contract is signed by all required parties.
27. **DEFINITIONS:** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.  
**“Agency”** or **“Contracting Agency”** shall mean Albuquerque Public Schools (APS), New Mexico Public Schools Insurance Authority (NMPSIA), New Mexico Retiree Health Care Authority (NMRHCA), and/or State of New Mexico Risk Management Division (SONM).  
  
**“Notice of Award”** shall mean a formal written notice by APS, NMPSIA, NMRHCA, or SONM, that a firm(s) has/have been selected to enter into a contract for services.  
  
**“Contract”** shall mean a fully executed agreement for the procurement of items of tangible personal property or services.  
  
**“Contractor”** shall mean the successful Offeror who has signed a fully executed agreement with an IBAC agency.

**“Determination”** shall mean the written documentation of a decision of a procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

**“Desirable”** the terms **“may”**, **“can”**, **“should”**, or **“prefers”** identify a desirable or discretionary item or factor.

**“Evaluation Committee”** shall mean a body appointed by the Agency management to evaluate proposals and make selection recommendation.

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

**“Fully Executed”** shall mean that a final, contractual agreement has been signed by all required parties.

**“Mandatory”** the terms **“must”**, **“shall”**, **“will”**, **“is required”**, or **“are required”**, identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

**“Offer”** – the term means **“proposal”**, **“solution”**, means all documents submitted to APS Procurement responding to RFP.

**“Offeror”**, **“Bidder”**, or **“Proposer”** is any person, corporation, or partnership who chooses to submit a proposal in response to this RFP.

**“Owner”** shall be Albuquerque Public Schools.

**“Purchasing Agent”** shall mean the RFP Buyer, as noted on the RFP Cover Sheet.

**“Purchase Order”** shall mean the document, which directs a Contractor to deliver items of tangible personal property or services pursuant to an existing contract.

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

**“Responsible Offeror”** shall mean an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services or items of tangible property described in the RFP.

**“Responsive Offer”** or **“Responsive Proposal”** shall mean a proposal which conforms in all material respects to the requirements set forth in the RFP.



# **TERMS AND CONDITIONS**

1. **TERM:** The IBAC reserves the right to procure the services/goods as described in this RFP and enter into a contract as described within this RFP.
2. **REQUEST(S) NOT DEFINED IN SCOPE OF WORK:** Contractor shall be held responsible to **NOT** fill requests which are clearly beyond the defined scope of this contract. Should such requests occur, Contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.
3. **TAXES:** Albuquerque Public Schools (APS), New Mexico Public Schools Insurance Authority (NMPSIA), New Mexico Retiree Health Care Authority (NMRHCA), and State of New Mexico Risk Management Division (SONM), hold a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTC will be issued upon request.
4. **NON-APPROPRIATION:** Each IBAC agency's obligation to make payment under the terms of this RFP is contingent upon its appropriation of sufficient funds to make those payments. If any of the IBAC agencies do not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice to that effect to the Contractor, from said IBAC agency. Each IBAC agency's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
5. **PROCUREMENT CODE:** The Procurement Code, NMSA 1978, §13-1-28 through §13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for bribes, gratuities, and kickbacks.
6. **TERMINATION:** Either party may terminate this contract as follows:
  - A. Termination by the Contractor
    1. The Contractor may terminate this contract with an IBAC agency **only** if said IBAC agency fails to comply with any provisions of this contract and after receiving notice of the noncompliance said IBAC agency fails to cure the noncompliance within ten (10) days, or
    2. By written mutual agreement between the Contractor and the respective IBAC agency.
  - B. Termination by any IBAC agency
    1. For Cause
      - a. The occurrence of either one of the following events will justify termination for cause:
        - i. Contractor's documented failure to perform the work in accordance with the contract documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
        - ii. Contractor's violation in any substantial way of any provisions of this contract.
      - b. If either one of the events identified above occur, an IBAC agency may, after giving Contractor (and the surety, if any) ten (10) days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.
      - c. Where Contractor's services have been so terminated by said IBAC agency, the termination will not affect any rights or remedies of said IBAC agency against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the IBAC agency will not release the Contractor from liability.
    2. For Convenience
      - a. Upon ten (10) days written notice to Contractor, an IBAC agency may without cause and without prejudice to any other right or remedy of said IBAC agency, elect to terminate the contract.
      - b. In such case, Contractor shall be paid (without duplication of any items):

- i. For completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination.
  - ii. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the contract document in connection with uncompleted work.
- c. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
7. **INDEMNIFICATION:** The Offeror shall be responsible for damage to persons or property that occurs as a result of Offeror’s fault or negligence, or that of any of his/her employees, agents or subcontractors. Offeror shall save and hold harmless Albuquerque Public Schools (APS), New Mexico Public Schools Insurance Authority (NMPSIA), New Mexico Retiree Health Care Authority (NMRHCA), or State of New Mexico Risk Management Division (SONM) against any and all losses, cost, damage, claims, expenses or liability in connection with the performance of the contract. Any equipment or facilities damaged by the Offeror’s operation shall be repaired and/or restored to their original condition at the Offeror’s expense.
8. **INSURANCE (If Applicable):** The successful Offeror(s) shall purchase and maintain statutory limits of Worker's Compensation, Public Liability and Automobile Liability Insurance approved by each respective IBAC agency at the time of contract award with said agency. Albuquerque Public Schools (APS), New Mexico Public Schools Insurance Authority (NMPSIA), New Mexico Retiree Health Care Authority (NMRHCA), or State of New Mexico Risk Management Division (SONM) shall, as applicable, be included as a loss payee and/or additional insured. Public Liability and Automobile Liability insurance shall include at least the following coverage:

General Liability Insurance – per occurrence General Aggregate – \$2,000,000 Product/completed operations aggregate \$1,000,000	\$1,000,000
Professional Liability Insurance (E&O) – per occurrence Professional Aggregate – \$2,000,000	\$2,000,000
Bodily injury, per occurrence	\$1,000,000
Medical and medically-related expenses	\$10,000
Vehicle bodily injury, each occurrence, excluding medical and medically related expenses	\$750,000
Property Damage, per occurrence	\$1,000,000

Contractor shall furnish Owner with certificates of insurance with the contract documents and prior to the commencement of work. See below for each IBAC agency, the Certificate Holder name, and address for submitting Certificate(s).

**Albuquerque Public Schools**

**Certificate Holder:**

Board of Education, Albuquerque Public Schools

**Address for submitting Certificate:**

APS Procurement Department, Suite 500E  
PO Box 25704  
Albuquerque, New Mexico 87125

**New Mexico Public Schools Insurance Authority**

**Certificate Holder:**

New Mexico Public Schools Insurance Authority

**Address for submitting Certificate:**

New Mexico Public Schools Insurance Authority  
410 Old Taos Highway  
Santa Fe, New Mexico 87501

**New Mexico Retiree Health Care Authority**

**Certificate Holder:**

New Mexico Retiree Health Care Authority

**Address for submitting Certificate:**

New Mexico Retiree Health Care Authority  
4308 Carlisle Blvd., Suite 104  
Albuquerque, New Mexico 87107

**State of New Mexico Risk Management Division**

**Certificate Holder:**

State of New Mexico Risk Management Division

**Address for submitting Certificate:**

General Services Department  
1100 St. Frances Drive  
Santa Fe, New Mexico 87505

9. **AUDIT:** Each IBAC agency reserves the right to audit the Contractor's records associated with this contract at any time during the contract period and for a period of up to three years following the expiration or termination of the agreement. Such audit may be conducted by the IBAC agency's personnel or a third party under contract with said IBAC agency. The IBAC agency shall give the Contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from the IBAC agency, the Contractor agrees to fully cooperate with the auditors. If Contractor subcontracts any portion of its obligation to another party, Contractor shall guarantee said IBAC agency's access to books and records of such party.
10. **GOVERNING LAW:** This RFP and any contract with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.
11. **INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor who may be performing services for one or more of the IBAC agencies as a result of this RFP. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the IBAC agency for whom contract services are being rendered as a result of this procurement.
12. **DEBARMENT OR SUSPENSION:** A business (Contractor, Subcontractor or Supplier) that has either been debarred or suspended pursuant to the requirements of NMSA 1978, §13-1-177 through §13-1-180, and §13-4-11 through §13-4-17 as amended, shall not be permitted to do business with any IBAC agency and shall not be considered for award of the contract during the period for which it is debarred or suspended with all IBAC agencies.
13. **CONFLICT OF INTEREST:** By submitting a proposal, the Offeror certifies that no relationship exists between the Offeror and any IBAC agency that interferes with fair competition or is a conflict of interest; and no relationship exists between such Offeror and another person or firm that constitutes a conflict of interest that is adverse to any of the IBAC agencies.
14. **NON-DISCLOSURE:** The Offeror shall not disclose any information relating to students, and employees of any of the IBAC agencies other than what is allowed under HIPAA, or such information that may be authorized by the individual student or employee. Vendor agrees to indemnify and hold harmless any of the IBAC agencies from any damages, claims, liabilities, and costs including reasonable attorney fees in the event any unauthorized release of such information occurs.

15. **PAYMENT:** Any invoice received and payment made shall be subject to each individual IBAC agency's terms and conditions (NET 30) unless specifically waived by said IBAC agency in a separate written document.
16. **ASSIGNMENTS:** The awarded contractor shall not assign nor delegate specific duties as part of this RFP not transfer any interest nor assign any claims for money due or to become due under this RFP without the written consent of the respective IBAC agency.

## **PROTESTS**

Any Offeror who is aggrieved in connection with a solicitation or award of an Agreement may protest to the APS Purchasing Office in accordance with the requirements of the Contracting Procurement Regulations and the State Procurement Code. The protest should be made in writing within twenty-four (24) hours after the facts or occurrences giving rise thereto, but **NO LATER THAN** fifteen (15) calendar days after the facts or occurrences giving rise thereto (NMSA1978, §13-1-172). The protest must be in writing and delivered to the Executive Director - Procurement Department, Albuquerque, New Mexico. See APS address information on RFP Cover Sheet.

1. In the event of a timely protest under this section, the Purchasing Agent and the Agency shall not proceed further with the procurement unless the Purchasing Agent makes a determination that the award of Agreement is necessary to protect substantial interests of the Contracting Agency (NMSA 1978, §13-1-173).
2. The Purchasing Agent or his/her Designee shall have the authority to take any action reasonably necessary to resolve a protest of an aggrieved Offeror concerning a procurement. This authority shall be exercised in accordance with adopted regulations, but shall not include the authority to award money damages or attorneys' fees (NMSA 1978, §13-1-174).
3. The Purchasing Agent or his/her Designee shall promptly issue a determination relating to the protest. The determination shall:
  - A. State the reasons for the action taken; and
  - B. Inform the protestant of the right to judicial review of the determination pursuant to NMSA 1978, §13-1-183.
5. A copy of the determination issued under NMSA 1978, §13-1-175 shall immediately be mailed to the protestant and other Offerors involved in the procurement in compliance with NMSA 1978, §13-1-176.

# SCOPE OF WORK

## **OVERVIEW**

The IBAC is a joint purchasing collective established by state statute which consists of the following agencies (and their membership):

Albuquerque Public Schools (APS)

New Mexico Public Schools Insurance Authority (NMPSIA)

New Mexico Retiree Health Care Authority (NMRHCA)

State of New Mexico's Risk Management Division (SONM)

All IBAC agencies currently provide comprehensive medical, which will include Medicare Advantage, dental, and vision benefits to their members (employees/retirees and eligible dependents). A majority of these benefits are self-insured; though, there are some fully insured offerings as well. Plan designs and carriers differ. Please reference each agencies' web site for additional information.

<https://www.aps.edu/human-resources/benefits>

<http://nmrhca.org>

<https://nmpsia.com/index.html>

<https://www.mybenefitsnm.com>

## **Introduction**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of medical, dental, vision and Medicare programs. The initial effective date for the medical, dental and vision and Medicare coverages is July 1, 2020 for all IBAC agencies except APS. APS coverages are effective January 1, 2021.

## **Background Information**

The Health Care Purchasing Act (Act) of 1997 [13-7-1 NMSA 1978] was enacted to ensure public employees, public school employees and retirees of public employers and the public schools access to more affordable and enhanced quality of health insurance/coverage through cost containment and savings effected by procedures for consolidating the purchasing of publicly financed health insurance/coverage. The Act requires the four agencies listed below to enter into a cooperative consolidated purchasing effort to provide plans of health care benefits for the benefit of eligible participants of the respective agencies. However, the four agencies are not required to select the same providers/carriers.

The Interagency Benefits Advisory Committee (IBAC) is composed of representatives of each of the four New Mexico state agencies addressed in the Health Care Purchasing Act of 1997. All New Mexico public employers are eligible to participate in the IBAC either directly or through one of the agencies.

### **Albuquerque Public Schools (APS)**

[www.aps.edu](http://www.aps.edu)

APS offers benefits to approximately 12,000 full-time employees, including 6,000 teachers at 143 schools; 88 elementary, 30 middle schools, 4 K-8 schools, 21 high schools and 31 charter/alternative schools. By statute, APS is the only New Mexico public school not part of the NMPSIA pool. APS currently covers approximately 16,000 members in our self-insured medical plan (one EPO plan and two PPO point-of-services plans administered by three separate vendors with different provider networks), approximately 17,500 members in our two self-insured dental plans, and approximately 15,500 members in our self-insured vision plan. Enrollment is exclusive to APS employees and eligible dependents.

Each October, APS offers an annual switch/open enrollment for the medical, dental and vision plans for coverage effective January 1<sup>st</sup> of the following year. There is a two-year lock-in enrollment rule on the dental and vision plans. For premium/fee billing, APS uses one billing group.

The RFP questions and scoring components will give potential Offerors insight into the things that are important to APS: utilization management, value based care and shared decisions, population health, transparency and consumerism tools, and the security and privacy of our members' information. The on-going challenge is to offer an attractive, competitive benefits package with the best possible care and outcomes, and at the most affordable cost to our employees and the District.

### **New Mexico Retiree Health Care Authority (NMRHCA)**

[www.nmrhca.org](http://www.nmrhca.org)

The NMRHCA provides healthcare benefits for retirees and eligible dependents from participating employer groups. This includes but is not limited to retirees who were previously covered under NMPSIA, SONM and APS.

NMRHCA covers approximately 15,500 retirees and eligible dependents under age 65 and approximately 40,000 retirees and eligible dependents over age 65 and another 9,000 retirees and eligible dependents who participate in voluntary coverage only. Employer groups may elect to join annually. Participation petitions from public employers not currently contributing to the NMRHCA are accepted semi-annually (July 1 and January 1). For participants over age 65, NMRHCA offers a self-insured Medicare Supplement Plan and several fully insured Medicare Advantage Plans. Regarding enrollment opportunities for individual participants, NMRHCA conducts annual "switch enrollments" for its medical plans and open enrollment once every two years. The switch enrollment period is held between October and November, and plan changes are implemented effective January 1st. Members are allowed to enroll in a dental and/or vision plan once every four years. Regarding premium/fee billing, NMRHCA does its own billing.

NMRHCA is currently seeking opportunities to assist and educate our members about the features of our programs, the resources made available to them and assistance in navigating their health care treatment and access options. These agreements will seek to improve and maintain access, leverage cost-containment opportunities, and hold providers accountable for the care provided to our members. NMRHCA plans to evolve with the continually changing health care landscape in order to better serve our members and preserve the value the retiree health care program.

### **New Mexico Public Schools Insurance Authority (NMPSIA)**

[www.nmpsia.com](http://www.nmpsia.com)

NMPSIA provides insurance coverage for 88 New Mexico public school districts, 97 charter schools, and 27 other educational agencies across the state of New Mexico. NMPSIA covers approximately 47,000 members under its three (3) self-funded medical plans (High Option Medical with two carriers, Low Option Medical with two carriers, and an EPO Plan with one carrier), approximately 53,000 members under its two (2) self-funded dental plans (High Option Comprehensive and Low Option Basic) with one carrier, and approximately 20,000 members under the full-insured vision plan. Participants are required to make a two-year vision election and coverage cannot be dropped until each family member meets the two-year enrollment requirement.

NMPSIA serves as the secondary payer for one employer group with Medicare eligible retirees and serves as a secondary payer for grandfathered board members. Members in these two groups are coded as such with the weekly EDI file sent to the carriers.

NMPSIA provides wellness-wellbeing programs under the medical plans, as well as disease and care management/coordination programs in an attempt to improve the overall health of the insured population.



NMPSIA's expectations are for claims data, health risk assessment appraisal results, and lab/radiology results to integrate with the wellness-wellbeing platform to assist in better managing members who are at risk or who have been diagnosed with certain diseases and conditions.

NMPSIA plans to continue study the feasibility of reducing member cost share for services based on good behavior and engagement in the well-being programs as well as redirecting their care to quality providers with better pricing for certain medical procedures. NMPSIA welcomes any ideas from the medical plans in assisting with NMPSIA's cost containment efforts.

Account management team performance is extremely important to NMPSIA. NMPSIA requires a commitment on exemplary performance and an outline with the scope of services the carrier intends to carry out through account management during the duration of the contract. NMPSIA requires the account management team to report any problematic issues or system issues as they develop, as well as a corrective action plan.

NMPSIA requires the medical plans to provide claims data (on a timely basis) to the data warehouse, currently at the Segal Company.

All public school districts (other than Albuquerque Public Schools), and charter schools currently are mandated to participate in the NMPSIA Group Plan; however, they but may petition to the NMPSIA Board to opt out once every four years, subject to proof of comparable alternatives and better pricing. Other educational agencies may also petition to the NMPSIA Board to join.

NMPSIA offers an open/switch enrollment each fall (usually October/November) for medical, dental and vision coverage. This coverage goes into effect on January 1st of the following year.

Regarding premium/fee billing, NMPSIA has 212 different subgroups, but one consolidated billing is prepared by the NMPSIA Third Party Administrator for Enrollment, Eligibility and Billing and remitted to the vendor for either ASO fees or premiums.

NMPSIA requires the carriers to assign each school district, charter school and educational agency as a subgroup in order to track utilization per plan.

NMPSIA's Third Party Administrator provides full-file electronic weekly feeds and requires carrier reconciliation and confirmation that all files have loaded. Any discrepancies MUST be communicated to NMPSIA's Third Party Administrator and corrected prior to loading the following week's electronic file feed.

### **The State of New Mexico Risk Management Division (SONM)**

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

The SONM provides insurance coverage for all active employees of the State of New Mexico and includes some 108 New Mexico municipalities, schools, and counties known as local public bodies (LPB). The SONM currently covers approximately 57,000 members under its medical plans, the dental plan and the vision plan. Additional local governmental plans have joined the SONM plans; the employees will be included in the census. Others may elect to join in the future, but must offer the same plans as the SONM. Regarding annual enrollment opportunities for individual participants, there is an open/switch enrollment each year. Regarding premium/fee billing, SONM prepares a consolidated premium/fee statement that combines all of their agencies. SONM bills monthly premium to the individual LPB's, and each state agency premium feeds into the Department of Finance and Administration on a bi-weekly basis, and they submit premium to the Risk Management Division bi-weekly on their behalf.

The State of New Mexico strives to provide the most comprehensive affordable health care to its members. We work to bundle services and obtain value based pricing and discounts whenever we are able. As we are a self-

funded health plan member, education is paramount to keeping costs low. We have an onsite health center in Santa Fe which provides no-cost medical care to our SONM plan members. We would like to open additional health centers in the future. We provide basic life coverage to all our employees, as well as an Employee Assistance Program, regardless of whether they subscribe to our benefits.

We are interested in obtaining information on a comprehensive Wellness program for our members. This program would include Biometric Screenings, exercise incentive programs, trackers (nutritional, exercise and water, etc.) disease management programs, cost estimator, provider outreach, health and wellness database, and value-based pricing.

**Overview of Current Group Benefits Program**

The following are the plans currently offered through the IBAC agencies collectively. Please note that not all vendors/plans are offered by each agency.

Medical:

	APS	NMRHCA	NMPSIA	SONM
Blue Cross Blue Shield of New Mexico PPO	x	x	x	x
Blue Cross Blue Shield of New Mexico HMO				x
Blue Cross Blue Shield of New Mexico EPO Plan			x	
Presbyterian Health Plan PPO	x	x	x	
Presbyterian Health Plan HMO				x
TrueHealth New Mexico	x			

\* Plans noted above are self-insured

A focus of this RFP will be the pursuit of specific objectives related to the following elements of value-based purchasing and the IBAC will place emphasis on these items throughout the totality of this procurement cycle.

A. Value-Based Plan Design

- a. Cost-sharing (deductible, coinsurance or copayment) adjustment for member engagement.
- b. Cost-sharing adjustment for high-value service
- c. Cost-sharing adjustment for low-value service

B. Enhanced and Standardized Reporting

- 1. HEDIS
- 2. Market-based (but standardized) outcomes measurement
- 3. Increased detail for high-dollar claimants. Require medical plan administrator Case Manager to verify that member has been:
  - a. Correctly diagnosed
  - b. Implemented appropriate course of treatment for diagnosis

C. Value-Based Provider Reimbursement – Consideration to be given to opportunities both with and without medical plan administrator participation

- 1. Reference Pricing
- 2. Bundled Payments
- 3. Integrated Care Model Risk Sharing
- 4. Pay for Performance

Note:

The NMRHCA currently also offers the following plans for Medicare Retirees:

- Approximately 23,000 Medicare retirees, spouses and dependents participate in the self-insured Medicare Supplement plan offered through BCBSNM. This self-insured plan has a prescription drug carve out.
- Approximately 17,000 Medicare retirees and spouses participate in the fully insured Medicare Advantage HMO plans offered through Blue Cross Blue Shield of New Mexico, United Healthcare and Presbyterian Health Plan. Each carrier offers high and low HMO options.

Dental:

APS

- Offers two self-insured dental plans administered by Delta Dental, a Basic Plan and a Comprehensive Plan.
- Plans are contributory

NMPSIA

- Offers two self-funded dental plans administered by United Concordia; Basic Plan and Comprehensive plan.
- Plans are contributory

State of New Mexico RMD:

- One self-funded dental plan administered by Delta Dental of New Mexico
- Plan is contributory

NMRHCA

- Dental - Four fully insured dental plans, two administered by United Concordia and two administered by Delta Dental of New Mexico. Each carrier offers a Basic Plan and a Comprehensive Plan.
- Retiree pays 100% of the premium for the dental plans

Vision:

APS

- Vision plan is self-insured and administered by Davis Vision.
- Plan is contributory

NMPSIA

- Offers one fully insured vision plan administered by Davis Vision.
- Plan is contributory

State of New Mexico RMD:

- Offers one self-funded vision plan administered by Davis Vision.
- Plan is contributory

NMRHCA

- Offers one fully insured vision plan administered by Davis Vision
- The retiree pays 100% of the premium for the vision plan

Following lines will not be included in the scope of this RFP:

- Stop Loss Coverage:
- Prescription Drug Benefit Administration: Prescription drugs are carved out of the IBAC medical plans and are administered by ESI. The prescription drug program will not be part of this RFP.
- Basic Life, Voluntary/Additional Life and Long-term Disability: These coverages will not be part of this RFP

## **RFP SCHEDULE**

The RFP Buyer will make every effort to adhere to the RFP Schedule as noted on front cover of this RFP. The schedule is subject to change by addendum. The evaluation committee **MAY** interview the Offeror(s) of the top rated proposals; however, contracts may be awarded without such interviews and based solely on written offers. Finalists will be contacted to schedule interviews if required. If an interview is requested, evaluation scores will be re-scored to reflect written response and interview response.

## **PURPOSE OF THIS REQUEST FOR PROPOSAL**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals, to establish a contract through competitive negotiations to secure medical, dental, vision, EAP and Medicare programs for The Interagency Benefits Advisory Committee (IBAC) and its approximately 200,000 members effective July 1, 2020 (January 1, 2021 for APS).

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

## **SUMMARY SCOPE OF WORK**

Scope of procurement is to secure medical, dental, vision, Medicare Supplement/Medicare Advantage, EAP programs effective July 1, 2020 (January 1, 2021 for APS)

### **PLEASE NOTE:**

- If this is a procurement that will result in a statewide price agreement, that agreement is available to all executive agencies and other political subdivisions of the State of New Mexico. If this is not **EXPLICITLY** stated, the procurement will result in a contracted agreement only (see next).
- If this is a procurement that will result in a contractual agreement between two parties, the procurement may **ONLY** be used by those two parties exclusively.

Scope of work will be based on RFP and final negotiations. The detailed scope of work is included in separate technical evaluations based on coverage to be proposed:

- Medical Carrier Operations (Minimum Requirements, Claims & Customer Service Operations, Reporting, Medical Utilization Management, Medical Value Based Care, Medical Population Management, Medical Network Evaluation, Transparency Tools, Privacy & Security and Account Team & References),
- Dental Carrier Operations (Minimum Requirements, Claims & Customer Service Operations, Reporting, Transparency Tools, Dental Specific Operations, Reporting, Privacy & Security, Account Team & References)
- Vision Carrier Operations (Minimum Requirements, Claims & Customer Service Operations, Reporting, Vision Specific Operations, Transparency Tools, Reporting, Privacy & Security, Account Team & References).
- Medicare Supplement/Medicare Advantage: (Minimum Requirements, Medicare Supplement & Medicare Advantage, Privacy & Security, Account Team & References).
- Employee Assistance Program (Minimum Requirements, EAP Specific Questions, Privacy & Security, Account Team & References)

In addition to containing the detailed scope of work, the questionnaires and exhibits associated with each of these specific coverage RFP Sections will be used to assist in evaluating the contractor's capabilities.

## **PROPOSAL SPECIFICATIONS**

Offerors should respond to questions in the following sections based on the specific scopes of work the bidder is willing to provide. All question attachments can be found in the Excel file titled IBAC RFP 20-014MG Questions Attachments, which can be downloaded from <https://www.aps.edu/procurement/current-bids-and-rfps>

## Categories & Weights

1. Attachment A: Minimum Requirements (All Offerors MUST complete)
2. Attachment B: Claims Customer Service & Operations (Medical Carriers, Dental Carriers, Vision Carriers): Area focus is on the operational components of the administration of benefits.
3. Attachment C: Reporting (Medical Carriers, Dental Carriers, Vision Carriers): Area focus is on reporting requirements and preferences of the IBAC agencies.
4. Attachment D: Medical Utilization Management (Medical Carriers ONLY): Area focus is on the programs Offerors will provide that will address the utilization management needs of the IBAC agencies.
5. Attachment E: Medical Value Based Care (Medical Carriers ONLY): Area focus is on innovative and proven methods of providing value-based care that the IBAC agencies may adopt for their population.
6. Attachment F: Medical Population Management (Medical Carriers ONLY): Area of focus is on population management programs the Offerors will provide that will address specific population health needs.
7. Attachment G: Medical Network Analysis (Medical Carriers ONLY): Area of focus is on the approach of creating, maintaining and delivering a sufficient medical network of providers for the IBAC populations.
8. Attachment H: Transparency Tools & Consumerism (Medical, Vision & Dental Carriers) Area of focus is on demonstrating transparency and other tools that IBAC consumer may use in the accessing of care.
9. Attachment I: Dental Specific Questions (Dental Carriers): Area of focus is on specific questions for the administration of dental benefits, both under a self-insured and fully insured model.
10. Attachment J: Vision Specific Questions (Vision Carriers): Area of focus is on specific questions for the administration of vision benefits, both under a self-insured and fully insured model.
11. Attachment K: Medicare Supplement/Medicare Advantage: Area of focus is on the administration of Medicare programs for the applicable IBAC populations, including Medicare Supplement programs and Medicare Advantage programs.
12. Attachment L: Employee Assistance Program: Area of focus is on the ability of the bidder to provide an EAP service to the IBAC agencies.
13. Attachment M: Privacy & Security (All Offerors MUST complete): Area of focus is in demonstrating to the IBAC agencies the Bidder's ability to meet or exceed all privacy and security requirements for the administration of benefits under applicable federal and state laws/regulations.
14. Attachment N: Account Team & References (All Offerors MUST complete): Area of focus is demonstrating to the IBAC agencies the Bidder's strength in the account team that will support a potential award and providing references that will demonstrate past performance.

[There is no Attachment O]

# **EVALUATION CRITERIA**

**EVALUATION CRITERIA**

Each proposal may be awarded up to 100 points. Additional points will be awarded in compliance with NMSA 1978, §13-1-21, for New Mexico In-State Resident Business and Resident Veteran Business. If proposal is a Joint Venture, Offeror shall state in the submitted proposal the percentage of work that will be performed by the Resident Business and/or Resident Veteran Business. Please Note: An Offeror cannot be awarded both a resident preference and a resident veteran business preference. Offerors shall include in their proposal a copy of certificate issued by State of New Mexico Taxation & Revenue. The Preference does not apply if APS is utilizing federal funds.

**\*\*\*The Offeror should contact Buyer for clarification of evaluation criteria or terminology\*\*\***

	Possible Points	Points This RFP
<p><b>RFP Responses</b> The total number of sections answered by the bidder will evaluate the technical capability for each line submitted (one bidder submitting for Medical, Dental &amp; Vision will answer all applicable sections. Medical Questions will receive one score, Dental will receive one score, Vision will receive one score. Each of the three scores may receive up to 45 points). Each question will be worth up to 5 points, and each section has a specific weighting that add up to 100%.</p>	55	
<p><b>Cost</b> The cost associated with the services to be performed under this proposal. The lowest costing Bidder’s quote will be used as the basis for all other calculations and receive the full 35 points. All other Offerors will be awarded points based on their relationship to this “basis” offer. New Mexico GRT or other applicable taxes are <b>not</b> to be included in the cost proposal of this RFP.</p>	45	
<p><b>Total Possible Points</b></p>	<b>100</b>	
<p><b>New Mexico Resident Business Preference:</b> Five percent of the total possible points to a resident business. Offeror shall include a copy of their In-State Certificate issued by State of New Mexico Taxation &amp; Revenue Department.</p>	5	
<p><b>Veteran New Mexico Resident Business Preference:</b> Ten percent of the total possible points to a resident veteran business.</p> <ul style="list-style-type: none"> <li>• 10 points for Resident Veteran Business/Contractor with annual revenues of \$3 million or less as verified by State of NM Tax &amp; Revenue.</li> </ul>	10	
<p><b>Finalist Presentation</b></p>	20	
<p><b>Total Possible Awarded Points</b></p>	<b>100-130</b>	

**Note: FAILURE** to adequately address and meet the above requirements may be cause for the proposal to be deemed non-responsive by the Buyer.

## SUBMITTAL REQUIREMENTS

*(For ease of evaluation, Proposals should be formatted in the order as listed below)*

The Offeror is particularly encouraged to address all points that will be evaluated as described herein in each point of the evaluation criteria. If a factor of evaluation is not adequately responded to by the Offeror, the Offeror may be determined to be non-responsive.

Offeror shall submit one (1) original proposal clearly marked **ORIGINAL** on the binder cover, six (6) identical copies clearly marked **COPY** on the binder covers, and one (1) identical electronic copy (flash drive) containing the complete, submitted offer. The flash drive must be clearly labeled with your company name and RFP 20-014MG. *Email and fax copies are NOT an acceptable form of an electronic copy.*

### **PROPOSAL – DETAILED REQUIREMENTS**

#### **1. Proposal Format and Organization - Written**

Each Proposal shall be submitted in one 3 inch three-ring binder, with Tab Dividers delineating each section, as identified below. Page format shall be 8-1/2” x 11” with foldout sheets (if any) allowed up to 11” x 17” in size. Foldout pages shall be counted as two pages **and shall be numbered as such**. Text will be no smaller than 10 point font.

Proposals shall not exceed 60 pages total for all of the tabbed sections listed below, excluding Tab 1 and Tab 4. Each sheet face that is printed with text or graphics counts as one page. Tab Dividers do not count as pages, provided the only text or graphics on the dividers are the tab numbers and section titles. Front and Back covers do not count towards page count.

Tab 1 – Letter of Submittal

Tab 2 – RFP Responses (with one tab for each section answered), include all attachments

Tab 3 – Price Proposal, include all attachments

Tab 4 – Required Forms

#### **2. Proposal Format and Organization – Electronic**

Each proposal shall also be submitted electronically (flash drive). Electronic submissions will follow the same structure as listed for the written submission. Attachments A-N are to be returned in the Excel format that will be available for download from <https://www.aps.edu/procurement/current-bids-and-rfps>. Offerors are to answer each question in one cell, with a limit of 3,000 characters (including spaces, numbers and letters). Any answers exceeding the 3,000-character limit may be disqualified and receive 0 points.

Offeror will also be able to submit one zip file on the aforementioned flash drive with any supporting graphs, screen shots, communication material.



# **PRICE PROPOSAL**

## **PRICE PROPOSAL**

Price proposal will be submitted as a separate 1-inch binder. An identical electronic copy will be included on a separate flash drive. Flash drive must be clearly labeled with your company name and RFP number – Price Proposal)

Pricing Proposal will include the following elements, as appropriate for the lines of service each bidder is submitting:

- Self-Insured ASO Fees
- Fully Insured Premium Calculation spreadsheet (Medicare Advantage, Vision)
- EAP Per Employee Per Month (PEPM) administrative fee
- Any additional cost not stipulated in any other section

Financial Template Attachments:

- Attachment P: Medical Inpatient – PPO
- Attachment Q: Medical Outpatient – PPO
- Attachment R: Professional – PPO
- Attachment S: Professional Dental SI
- Attachment T: Professional Vision SI
- Attachment U: ASO Template
- Attachment V: EAP PEPM
- Attachment W: Fully Insured Premium

All Price Proposal attachments can be found in the Excel file titled IBAC RFP 20-014MG Financial Attachments Templates which can be downloaded from <https://www.aps.edu/procurement/current-bids-and-rfps>

# FORMS & ATTACHMENTS

*Question Attachments A – N can be found in the Excel file titled  
IBAC RFP 20-014MG Questions Attachments.*

*[There is no Attachment O]*

*Price Proposal Attachments P – W can be found in the Excel file titled  
IBAC RFP 20-014MG Financial Attachments Templates*

*All Excel Attachment Spreadsheets can be downloaded from:  
<https://www.aps.edu/procurement/current-bids-and-rfps>*

**ACKNOWLEDGEMENT OF RECEIPT FORM**

**RFP 20-014MG**

**IBAC Medical, EAP, Medicare Programs, Dental & Vision, Employee Assistance Program (EAP) and Medicare Programs**

**Acknowledgement of Receipt submission deadline: 11/01/2019 @ 5:00PM (local time)**

**Submit completed and signed Acknowledgement form via email to:  
Marilee.Gallacher@aps.edu**

In acknowledgement of receipt of this Request for Proposal, the undersigned agrees that he/she has received a complete copy from the APS website (<https://www.aps.edu/procurement/current-bids-and-rfps>). The RFP consists of the RFP document (in PDF format), Attachments and any Addendum.

The Acknowledgement of Receipt should be completed, signed and returned to the Procurement Manager at the email address above, no later than 5:00 PM local time on November 1, 2019. Only potential Offerors who elect to return this form, signed and completed with the indicated intention of submitting a proposal, will receive email notifications and electronic copies of all Offeror written questions and the Agency's written responses to those questions, as well as email notification of RFP addenda, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY (Print Name): \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE #: \_\_\_\_\_

E-MAIL ADDRESS (Required): \_\_\_\_\_

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

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**The above name and email address will be used for all correspondence related to the Request for Proposal.**

**CHECK ONE:**

**This Firm does intend to respond to this Request for Proposal.**

**This Firm does not intend to respond to this Request for Proposal.**

**LETTER OF TRANSMITTAL FORM**  
**SUBMIT WITH YOUR PROPOSAL**

Items one (1) to four (4) each **MUST** have a response, failure to respond to all four items **WILL** result in the disqualification of your proposal.

1. Agency (Name) and Mailing Address of the submitting organization:


2. For the Person authorized by the organization to contractually obligate the organization:

Name	
Title	
E-Mail Address	
Telephone/Fax number	

3. For the person authorized to negotiate the contract on behalf of the organization:

Name	
Title	
E-Mail Address	
Telephone/Fax number	

4. For the person to be contacted for clarifications:

Name	
Title	
E-Mail Address	
Telephone/Fax number	

- On behalf of the submitting organization named in item one (1) above, I accept the Terms and Conditions governing the Procurement.
- I agree that submission of our proposal constitutes acceptance of the Evaluation Factors contained in this RFP.
- I acknowledge receipt of any and all amendments of this RFP.



Authorized Signature and Date (**Must** be completed and signed by the person identified in Item #2, above.)

# SAMPLE CONTRACTS

*Attachment X: APS Sample Contract, 6 pages*

*Attachment Y: NMPSIA Sample Contract, 9 pages*

*Attachment Z: NMRHCA and SONM Sample Contract, 15 pages*



**PROFESSIONAL SERVICE AGREEMENT**

(All spaces **MUST** be filled in)

Requisition # \_\_\_\_\_

**THIS AGREEMENT IS ENTERED INTO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ BY AND BETWEEN THE ALBUQUERQUE PUBLIC SCHOOLS, HEREAFTER REFERRED TO AS APS, AND CONTRACTOR.**

<b>CONTRACTOR INFORMATION:</b> Name:  Address:	<b>APS INFORMATION:</b> Name: School/Department: Address:
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**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

- SCOPE OF WORK:** The contractor will perform services as described in contractor’s written proposal attached hereto. (Provide this information as a separate attachment to this professional services agreement). The work will be subject to the General Terms and Conditions attached hereto.
- DELIVERABLES:** The scope of work shall include, as a minimum: what are the services, how are services provided, performance measures, who is performing the service, roles and responsibilities for contractor, when are the services provided, and cost/fees of service.
- BACKGROUND CHECK: Please check appropriate box.**  
 Contractor will **not have** unsupervised access to students. \_\_\_\_\_ (responsible APS employee's signature).  
 Contractor will have unsupervised access to students. Fingerprints and funds for background check attached.  
 Verification of background check results attached and Background check results on file as of \_\_\_\_\_  
 \_\_\_\_\_ (responsible APS employee’s signature)  
*No person shall be allowed to perform any services involving unsupervised access to students until the background check results acceptable to APS have been verified by APS.*
- COORDINATION:** The Contractor shall work at the direction of \_\_\_\_\_, who may designate to \_\_\_\_\_ coordinate the work of the Contractor. Work shall only be performed according to a specific written assignment, as described above or as may be provided as an attachment.
- COMPENSATION AND TAXES:** APS shall pay the Contractor for services rendered. Fee: \$ \_\_\_\_\_ (hourly, weekly, etc.) New Mexico Gross Receipts Tax: included or add at current rate for Contractor’s address \_\_\_\_\_ Tax exempt vendor. Contractor shall secure all licenses, permits, fees, registrations, etc., required for the performance of this work. Compensation will be paid based on services performed for authorized services. **Total amount including taxes billed against this Agreement shall not exceed \$ \_\_\_\_\_ . (CONTRACTOR IS RESPONSIBLE FOR NOT EXCEEDING THIS LIMIT.)**
- INVOICING:** Processing of payment will begin upon receipt by APS Accounts Payable of a detailed, certified invoice for services, which shall include dates and hours reported for the period covered, along with details and percent of work expended, as described above or per attachment. **ALLOW 30 DAYS FOR PAYMENT TO BE MADE.**
- Contractor agrees to Albuquerque Public Schools General Terms and Conditions.**
- TERM:** The work shall begin on (Date) \_\_\_\_\_, and terminate on (Date) \_\_\_\_\_.

**IN WITNESS WHEREOF, the parties have executed this agreement.**

(Type Name) CONTRACTOR

\_\_\_\_\_  
(Signature) CONTRACTOR

TITLE

DATE

(Type Name) APS SCHOOL/  
DEPARTMENT REPRESENTATIVE

\_\_\_\_\_  
(Signature) APS SCHOOL/  
DEPARTMENT REPRESENTATIVE

TITLE

DATE

**Mandatory Signature from Procurement in compliance with Board of Education Signature Authority.**

(Type Name) APS PROCUREMENT

\_\_\_\_\_  
(Signature) APS PROCUREMENT

TITLE

DATE



**ALBUQUERQUE PUBLIC SCHOOLS (APS)  
GENERAL TERMS AND CONDITIONS**

1. **NO PAROL EVIDENCE:** This Professional Service Agreement is intended by the parties as a final and complete expression of their Agreement. No course of prior dealings between the parties and no usage of the trade shall supplement any terms used in this Agreement.
2. **DEFINITIONS:** Definition of Terminology: This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.
  - “**Agreement**” shall mean the binding contract between APS and Contractor, Vendor, Bidder, Seller etc.
  - “**Award of Agreement**” shall mean a formal written notice by APS that a firm(s) has/have been selected to enter into a contract for services.
  - “**Contractor**” shall mean the successful Offeror, Vendor, or Seller with whom APS enters into a contact
  - “**Determination**” shall mean the written documentation of a decision of a procurement manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
  - “**Desirable**”: the terms “**may**”, “**can**”, “**should**”, or “**prefers**” identify a desirable or discretionary item or factor.
  - “**District**” shall mean Albuquerque Public Schools (APS)
  - “**Mandatory**”: the terms “**must**”, “**shall**”, “**will**”, “**is required**”, or “**are required**”, identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Bidder’s bid.
  - “**Offer**” – the term means “proposal” or “solution”, and includes all documents submitted to APS responding to RFP.
  - “**Owner**” shall be Albuquerque Public Schools.
  - “**Purchase Order**” shall mean the document, which directs a Contractor to deliver items of tangible personal property or services pursuant to an existing Agreement.
  - “**Requesting Department**” means the entity within APS which is the actual recipient of the services called for in this Professional Services Agreement, as identified on the “School/Department” line of the first page of this Agreement.
  - “**Vendor**” shall mean but is not limited to Contractor, Subcontractor, Seller, Offeror, etc.
3. **AMENDMENT:** This Professional Service Agreement may be amended by mutual agreement of the APS Purchasing Agent or his/her designee and the Contractor. An amendment to this Agreement shall not affect any outstanding orders issued prior to the effective date of the amendment. Amendments resulting in price adjustments and/or the extension of a price agreement expiration date are not allowed unless specifically provided for in the Professional Service Agreement specifications.
4. **DISCOUNTS:** APS will take advantage of prompt payment discounts whenever possible. Any discount period will not begin until the materials, supplies or services have been received and accepted and a correct invoice submitted for payment. If testing is required, the discount period will not begin until such tests are satisfactorily completed.
5. **PAYMENT:** Any invoices received and payment made shall be subject to APS’s Terms and Conditions (NET 30) unless those Terms and Conditions are specifically waived by APS in a separate written document.
6. **INSURANCE (IF APPLICABLE):** The contractor shall purchase and maintain Worker's Compensation, Public Liability and Automobile Liability Insurance approved by APS as a condition of contract award. Albuquerque Public Schools shall be included as a loss payee and/or additional insured. Public Liability and Automobile Liability insurance shall include at least the following coverage:

General Liability Insurance – Per Occurrence	\$1,000,000
General Aggregate - \$2,000,000	
Product/Completed Operations Aggregate \$1,000,000	
Bodily injury, per occurrence	\$1,000,000
Medical and medically-related expenses	\$5,000
Vehicle bodily injury, each occurrence, excluding medical and medically related expenses	\$750,000
Property Damage, per occurrence	\$1,000,000

Contractor shall furnish Owner with certificates of insurance with the contract documents and prior to the commencement of work.

**NOTE: Certificate holder shall be:** Albuquerque Public Schools

**Certificate of Insurance forwarded to:** Albuquerque Public Schools- Procurement Department  
P.O. Box 25704  
Albuquerque, New Mexico 87125-0704



7. **INVOICING**: The Contractor shall be paid for services rendered. Contractor shall provide detailed invoices to APS. In the event that APS disputes an invoice, APS shall notify the Contractor of the dispute and shall promptly pay the non-disputed portions of the invoice. Any invoice received and payment made shall be subject to APS's Terms and Conditions unless specifically waived by APS in a separate written document.
8. **INVOICING PROCEDURES**: Itemized invoices **MUST** clearly reference the appropriate Purchase Order (PO) number, description of supplies or services, correct quantities with matching unit price and extended totals. **SEPARATE INVOICES SHALL BE RENDERED FOR EACH AND EVERY COMPLETE SHIPMENT.**
- All invoice shall be submitted to APS Accounts Payable: P.O. Box 25704,  
Albuquerque, NM, 87125  
Via email to ([accounts.payable@aps.edu](mailto:accounts.payable@aps.edu))
9. **NON-APPROPRIATION**: APS's obligation to continue performance make payment under the terms of this Professional Service Agreement is contingent upon its appropriation of sufficient funds to support continuation of performance. If APS does not appropriate funds for the continuation of this procurement, this procurement will terminate upon written notice of that effect to the Contractor. APS's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
10. **PRICING ESCALATION (IF Applicable)**: Price escalation may be considered only at the anniversary date of this Professional Service Agreement. The Contractor must submit written documentation that adequately justifies need for pricing escalation, including the proposed new pricing structure. APS will review the information and render a Determination accepting or rejecting the new proposed pricing.
11. **TAXES**: APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of taxes on tangible personal property. A NTTC will be issued upon request.
12. **ASSIGNMENTS**: The Contractor shall not assign or delegate specific duties that are within the scope of this Professional Service Agreement nor transfer any interest or assign any claims for money due or to become due under this agreement without the written consent of APS.
13. **INDEPENDENT CONTRACTOR**: The Contractor is an Independent Contractor performing services for APS. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of APS as a result of this procurement.
14. **SUBCONTRACTS**: The requirements for Contractor Personnel, Subcontracting, and Audit set forth herein shall be inserted into all subcontracts between the Contractor and any subcontractor.
15. **CONTRACTOR PERSONNEL**: Personnel identified in Contractor's Proposal to APS are considered material to performance of any work under this Professional Service Agreement. Once a Purchase Order or Agreement has been executed, no changes of personnel will be made by the Contractor without prior written consent of APS. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience, and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel with the work to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. APS shall retain the right to request the removal of any of the Contractor's personnel at any time.
16. **REQUEST(S) NOT DEFINED IN SCOPE OF WORK**: Contractor shall be held responsible to **NOT** fill requests which are clearly beyond the defined scope of this Professional Service Agreement. Should such requests be made, Contractor has the responsibility of calling such violations to the attention of the APS Procurement Officer.
17. **PENALTIES**: The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.
18. **DEBARMENT OR SUSPENSION**: A business (Contractor, Subcontractor, Vendor, Seller or Supplier) that has either been debarred or suspended pursuant to the requirements of NMSA 1978, §13-1-177 through §13-1- 180, and §13-4-11 through §13-4-17, as amended, shall not be permitted to do business with APS and shall not be considered for a Professional Service Agreement during the period for which it is debarred or suspended with APS.
19. **CONTINGENCY FEES**: Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained or utilized by Contractor for the purpose of securing business. In the event violation or breach of this warranty, APS shall have the right to annul this Professional Service Agreement without liability or, at its discretion, to deduct from this order, price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- 20. INDEMNIFICATION:** Contractor agrees that [he/she/it] shall indemnify and hold APS and/or its employees, administrators, board members, and agents harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for attorneys' fees, consultants' and experts' fees, and settlement of claims) arising out of or related to contractor's performance of this contract.
- 21. PATENT AND COPYRIGHT INDEMNITY:** Contractor shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or services covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Contractor shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting from the infringement or claim of infringement.
- 22. NO MINIMUM GUARANTEE (If applicable) :** No commitment is made by APS as to quantity and frequency of purchase of services or products pursuant to this Professional Services Agreement. APS reserves the right to purchase items referenced under this agreement using any other method and from any other Vendor as deemed necessary and in the best interest of APS.
- 23. TITLE:** Title to any materials and supplies delivered hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from APS's Procurement Department. Order is subject to termination for failure to make timely delivery.
- 24. FOB:** Unless stated otherwise, the price for goods is FOB: Destination (APS's designated address).
- 25. ACCEPTANCE:** Acceptance of delivery of goods/services shall not be considered acceptance of the goods/services furnished. Acceptance occurs when the APS Requesting Department, after a reasonable opportunity to inspect the goods/services, signifies to the Contractor that the goods/services are conforming and fails to make an effective rejection.
- 26. DELIVERY:** Any goods provided to APS in connection with this Professional Services Contract shall be delivered free of the rightful claim of any third person, any security interest or other lien. Unless otherwise agreed all goods called for in this Professional Service Agreement shall be tendered in a single delivery and payment is due only upon such delivery (NET 30). For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval thereto from APS's Requesting Department. Order is subject to termination for failure to make timely delivery.
- 27. DELAYS IN DELIVERY:** Time is of the essence and this purchase may be subject to termination for failure to deliver goods or services on time, unless delay was caused by APS. If delay in delivery is foreseen, Contractor must notify the APS Requesting Department of late delivery, cause of late delivery and remedy for late delivery.
- 28. REVOCAION OF ACCEPTANCE:** The APS Requesting Department can revoke acceptance of goods or services when it is discovered, in a reasonable time, that the Contractor's nonconforming goods substantially impair the value of the goods or services.
- 29. CONTRACTOR'S RIGHT TO CURE A NONCONFORMING DELIVERY OF GOODS OR SERVICES:** The Contractor, upon notice of revocation of acceptance, shall correct without charge and deliver conforming goods or services in a reasonable time.
- 30. WARRANTIES:** Contractor warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Contractor. All applicable UCC warranties, express or implied are incorporated herein.
- 31. AUDIT:** APS reserves the right to audit the Contractor's records associated with this Professional Service Agreement at any time during the Term period and for a period of up to three (3) years following the expiration or termination of the agreement. Such audit may be conducted by APS personnel or a third party under Agreement with the APS. APS shall give the Contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from APS the Contractor agrees to fully cooperate with the auditors. If Contractor subcontracts any portion of its obligation to another party, Contractor shall guarantee APS's access to books and records of such party for Audit purposes.
- 32. CHANGES:** APS may make changes within the general scope of this order by giving notice to Contractor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Contractor shall be recognized without written approval of APS. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the order as changed hereunder.

- 33. SEVERABILITY:** If any provision of this Professional Service Agreement is found invalid or unenforceable, the remainder of the Professional Service Agreement will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of the resultant agreement will not be affected.
- 34. LABOR DISPUTES:** Contractor shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this Professional Service Agreement.
- 35. AFFIRMATIVE ACTION:** Contractor shall not maintain or provide racially segregated facilities for employees at any establishment under his/her control. Contractor agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity.
- 36. NONDISCRIMINATION:** Any Contractor doing business with the Albuquerque Public Schools must be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (rev. 1979) and the Americans with Disabilities Act of 1990 (public law 101-336).
- 37. TERMINATION BY APS:**
- 1. FOR CAUSE:**
    - a. The occurrence of either one of the following events will justify termination for cause:
      - i. Contractor's persistent failure to perform the work in accordance with the Agreement documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment).
      - ii. Contractor's violation in any substantial way of any provisions of this Agreement.
    - b. If either one of the events identified above occur, APS may, after giving Contractor (and the surety, if any) ten (10) days written notice, terminate the service of Contractor, exclude Contractor from site, and take possession of the work. Contractor shall be paid for project costs incurred up to the date of termination but shall not be paid for loss of profits resulting from such termination.
    - c. Where Contractor's services have been so terminated by APS, the termination will not affect any rights or remedies of APS against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by APS will not release the Contractor from liability.
  - 2. FOR CONVENIENCE:**
    - a. Upon ten (10) days written notice to Contractor, APS may without cause and without prejudice to any other right or remedy of APS, elect to terminate the Agreement.
    - b. In such case, Contractor shall be paid (without duplication of any items):
      - i. For completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination,
      - ii. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Agreement document in connection with uncompleted work.
    - c. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- 38. FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- a. Force Majeure shall **NOT** include the following occurrences:
    - i. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
    - ii. Late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition; or
    - iii. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.

- b. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.
- c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and that such delay or failure is caused by force majeure.

- 39. **NON-COLLUSION**: In signing this Professional Service Agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action to restraint competitive bidding in connection with this offer submitted to the APS Purchasing Agent or his/her designee.
- 40. **NON-DISCLOSURE**: The Contractor shall not disclose any information relating to students and employees of APS other than such information that may be authorized by the individual student or employee. The Contractor will ensure compliance with HIPAA and FERPA regulations as applicable. Contractor agrees to indemnify and hold harmless APS from any damages, claims, liabilities, and costs including reasonable attorney fees in the event any unauthorized release of such information occurs.
- 41. **CONFLICT OF INTEREST**: Contractor certifies that no relationship exists between the Contractor and APS that interferes with fair competition or is a conflict of interest; and no relationship exists between such propose and another person or firm that constitutes a conflict of interest that is adverse to APS.
- 42. **APPLICABLE LAWS**: If this Professional Service Agreement results from Federal funding or Grants, applicable clauses of the Uniform Guidance Procurement Standards are incorporated herein by reference. Any provision required to be included in an Agreement of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also shall be deemed to be incorporated herein. Any Agreement or litigation resulting from acceptance of this purchase order will be construed according to the laws of the State of New Mexico unless otherwise stated.
- 43. **GOVERNING LAW**: This Professional Service Agreement and any Agreement with a Contractor which may result from this procurement shall be governed by the laws of the State of New Mexico.

STATE OF NEW MEXICO

**PUBLIC SCHOOLS INSURANCE AUTHORITY**  
PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **PUBLIC SCHOOLS INSURANCE AUTHORITY**, hereinafter referred to as 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 Agency.

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work:

**2. Compensation.**

A. The Agency 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), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). 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 Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

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 Agency. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

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

**4. Termination.**

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least one hundred eighty (180) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency 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, the Agency 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.

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 the Agency; (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 Paragraph 5, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency'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 THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.***

D. 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 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 Procuring 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 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 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 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;

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 the Agency's making this Agreement;

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;

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

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 the Agency.

C. 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. Contractor shall provide immediate written notice to the Agency 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 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 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, NMSA 1978 §§ 13-1-28 through 13-1-199, 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 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.

**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 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.

**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.**

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 the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

**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 Agency by certified mail.

**21. New Mexico Employees Health Coverage.**

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

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

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage.

**22. 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.

**23. 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.

**24. 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:  
Ernestine Chavez, Executive Director  
New Mexico Public Schools Insurance Authority  
410 Old Taos Highway  
Santa Fe, New Mexico 87501  
Ernestine.Chavez@state.nm.us

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

Contract ID# \_\_\_\_\_

**25. Authority.**

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 have executed this Agreement as of the date of signature by the AGENCY below.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Legal Counsel – Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Chief Financial Officer

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

Contract ID# \_\_\_\_\_

This Agreement has been approved by the GSD/SPD Contracts Review Bureau:

By: \_\_\_\_\_  
GSD/SPD Contracts Review Bureau

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

RFP 20-014MG, ATTACHMENT Z: NMRHCA and NMRMD SAMPLE CONTRACT

State of New Mexico

[Insert Procuring Agency Name]

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

THIS Agreement (“Agreement”) is made by and between the State of New Mexico, [Insert Procuring Agency Name], hereinafter referred to as the “Procuring Agency” and [Insert Contractor Name], hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

[CHOICE #1 - If procurement method is a RFP, ITB or Sole Source, as applicable, use the following language: WHEREAS, all terms and conditions of the [RFP, ITB Number and Name] [SOLE SOURCE] and the Contractor’s response to such document(s) are incorporated herein by reference; and]

[CHOICE #2 – If procurement method is a state price agreement, use the following language: “WHEREAS, this Agreement is issued against the state or agency price agreement, established and maintained by the New Mexico State Purchasing Division of the General Services Department, SPD [Insert state price agreement number and name], and through this language hereby incorporates this price agreement by reference and gives the price agreement’s terms and conditions precedence over the terms and conditions contained in this present Agreement;”]

[CHOICE #3 - WHEREAS, all Parties agree that, pursuant to the Procurement Code, Section 13-1-125 NMSA 1978 and Sections 1.4.1.51 and 1.4.1.52 NMAC the total amount of this Agreement is \$60,000.00 or less, excluding taxes;

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

1. **Definitions.** [Alphabetize after list of standard Clauses and required definitions are agreed upon. Remove those definitions which do not belong or are not relevant to the present Agreement.]

A. "Agreement Administrator" means the individual appointed by the SPA to administer the Price Agreement. [Remove this language if this is a not a Price Agreement but is a Agreement between the Contractor and a single Procuring Agency or entity.]

B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.

C. "ITB" means Invitation to Bid as defined in statute and rule.

D. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof. [This language is unnecessary if this is a not a Price Agreement but is an Agreement between the Contractor and a single Procuring Agency or entity.]

E. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".

F. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the Procuring Agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any. [Remove this language if this is a not a Price Agreement but is an Agreement between the Contractor and a single Procuring Agency or entity.]

G. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.

H. "Products and Services schedule" refers to the complete list of products and services offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.

I. "RFP" means Request for Proposals as defined in statute and rule.

J. "You" and "your" refers to **(Contractor Name)**. "We," "us" or "our" refers to the State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.

## 2. **Scope of Work.**

The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference. [Alternatively, the contracting entity can forego placing the scope of work in an exhibit and state it in this section.]

## 3. **Compensation.**

A. **Compensation Schedule.** The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in paragraph D of this Clause.

[For an hourly-rate based contract use the following language:]

A. The Procuring Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour, such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Procuring Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT).**

B. Payment. The total compensation under this Agreement shall not exceed [Insert Dollar Amount] [CHOICE #1- excluding New Mexico gross receipts tax. PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE. CHOICE #2 - including New Mexico gross receipts tax.] **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.**

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

C. Taxes. [CHOICE #1- Use if Agreement is between two public entities -] Not Applicable as the Agreement is between two public entities.

[CHOICE #2 -] The Contractor shall be reimbursed by the Procuring Agency 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(s).

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



D. Retainage. [CHOICE #1 -] The Procuring Agency shall retain [INSERT percentage which is recommended at - twenty percent (20%)] of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable. [CHOICE #2 -] Not Applicable – The Parties agree there is no retainage.

E. Performance Bond. [CHOICE #1- If the amount of the Agreement exceeds \$1Million OR, if the Agreement is for custom developed software/application, OR Commercial Off the Shelf (COTS) software with greater than 20% Enhancement, OR for any other critical project execution concerns, use the following language.] Contractor shall execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a Performance Bond in the amount of [Insert Total Amount of agreed upon Performance Bond] in the name of the Procuring Agency. The Performance Bond shall be in effect for the duration of this Agreement and any renewals thereof. The required Performance Bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The Procuring Agency's right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor or to the State of New Mexico as a result of Contractor's failure to perform.  
[CHOICE #2 -] Not Applicable. The Parties agree there is no Performance Bond.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE FINAL REQUIRED SIGNATORY. This Agreement shall begin on the date approved by the Final Required Signatory and shall end on (DATE) unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The Procuring Agency reserves 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.

5. Termination

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

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

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based

and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency 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, the Procuring Agency 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.

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 the Procuring Agency; (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.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency'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 THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

#### 6. 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 Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency 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.

#### 7. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are 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.

8. **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 any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

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 Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

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;

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 the Procuring Agency's making this Agreement;

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;

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

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 the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency 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 the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

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

9. **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 Procuring 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 the Terminations Clause of this Agreement, or to agree to the reduced funding.

10. **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.

11. **Penalties for violation of law.**

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.

12. **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 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.

13. **Workers Compensation.**

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

14. **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 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.

15. **Records and Financial Audit.**

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 the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments

16. **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.

17. **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.

18. **Non-Collusion**

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 State Purchasing Agent or agency or entity.

19. **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 Procuring Agency:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

20. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

21. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. **Default/Breach.**

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

23. **Equitable Remedies.**

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

24. **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 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.

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://insurenwnewmexico.state.nm.us/>.

**THE FOLLOWING CLAUSES ARE ADDITIONAL CLAUSES THAT MAY BE ADDED AS NEEDED. IF NOT INCORPORATED INTO THE AGREEMENT THEY SHOULD BE MARKED "RESERVED."** (These Clauses appear in no particular order.)

**Indemnification.**

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

### **Default and Force Majeure.**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

### **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 Procuring Agency.

### **Subcontracting.**

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

### **Inspection of Plant.**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

### **Commercial Warranty.**

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.

**Condition of Proposed Items.**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

**Release.**

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

**Confidentiality.**

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

**Contractor Personnel.**

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:  
**[Insert Contractor Staff Name(s)]**
  
- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring

Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

### **Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

### **Inspection.**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

### **Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

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

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent 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 State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent 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 State Purchasing 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.

D. If the State Purchasing 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.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing 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 State Purchasing Agent or other party to this Agreement may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. 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 State Purchasing Agent or other party to this Agreement may:

- (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
- (2) terminate the Agreement for default.

**THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

### **Insurance.**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. 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:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement 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.

**Arbitration.**

Any controversy or claim arising between the parties shall be settled by arbitration pursuant to NMSA 1978 § 44-7A-1 *et seq.*

**THE FOLLOWING CLAUSE SHOULD NOT BE INCLUDED IN ANY CONTRACT AS IT POTENTIALLY VIOLATES THE NEW MEXICO CONSTITUTION AND STATUTES**

**Limitation of Liability.**

The Contractor's liability to the Procuring Agency, or any Procuring Agency, for any cause whatsoever shall be limited to the purchase price paid [OR OFTEN 2 OR 3 TIMES THE PURCHASE PRICE] to the Contractor for the products and services that are the subject of the Procuring Agency's, or the Procuring Agency's, claim. The foregoing limitation does not apply to the Indemnification Clause of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence.

[So this clause could be OK if restricted to a limitation on the liability of the parties vis-à-vis one another – such as for breach of contract or the like – but not if it involves 3<sup>rd</sup> Party claims, which by their nature, are indeterminable when the contract is entered into]

# COMPLIANCE

*(REQUIRED LEGAL FORMS)*

*All of the following forms must be signed and submitted with your proposal or your proposal may be rejected.*

# CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

The following definitions apply:

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

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

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

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

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

“**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



# CONFLICT OF INTEREST, NON-COLLUSION AND DEBARMENT/SUSPENSION CERTIFICATION FORM

## CONFLICT OF INTEREST

As utilized herein, the term "Vendor" shall mean that agency submitting a proposal to Albuquerque Public Schools in response to the above referenced bids/request for proposals.

**The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:**

No employee or board member of Albuquerque Public Schools (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Albuquerque Public Schools employee, board member or close relative, with the exception of the person(s) identified below. Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the legislator: \_\_\_\_\_ List below the name(s) of any Albuquerque Public Schools employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor's stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor.

### CERTIFICATION OF NON-COLLUSION STATEMENT

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal agency. Does vendor agree? **YES Initials of Authorized Representative of vendor** \_\_\_\_\_

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### DEBARMENT/SUSPENSION STATUS

The Vendor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Federal Government, or any State agency or local public body, or in receipt of a notice or proposed debarment from any Federal or State agency or local public body. The vendor agrees to provide immediate notice to Albuquerque Public School's Purchasing Department in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal government, or any agency of local public body of the State of New Mexico, or upon receipt of a notice of proposed debarment that is received after the submission of the quote or offer but prior to the award of the purchase order or contract.

### CERTIFICATION

The undersigned hereby certifies that he/she has read the above CONFLICT OF INTEREST, NON-COLLUSION and DEBARMENT/SUSPENSION Status requirements and that he/she understands and will comply with these requirements. The undersigned further certifies that they have the authority to certify compliance for the vendor named **and that the information contained in this document is true and accurate to the best of their knowledge.**

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

Name of Person Signing (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Company (typed or printed): \_\_\_\_\_

Address: \_\_\_\_\_ City/ State: \_\_\_\_\_





**The Interagency Benefits Advisory Council (IBAC):**  
**Albuquerque Public Schools, New Mexico Public Schools Insurance Authority,**  
**New Mexico Retiree Health Care Authority, and State of New Mexico Risk Management Division**

**TERMS AND CONDITIONS**  
**STATEMENT OF CONFIDENTIALITY**

The undersigned employee of/subcontractor to \_\_\_\_\_, hereinafter referred to as "Offeror" and/or "Contractor", agrees, during the RFP process, and during the term of the Contract between Contractor and The Interagency Benefits Advisory Council (IBAC) and forever thereafter, to keep confidential all information and material provided by The IBAC or otherwise acquired by the Employee/Subcontractor, excepting only such information as is already known to the public, and including any such information and material relating to Attachments of this RFP, and relating to any client, vendor, or other party transacting business with The IBAC, and not to release, use or disclose the same except with the prior written permission of The IBAC. This obligation shall survive the termination or cancellation of the Contract between Contractor and The IBAC or of the undersigned's employment or affiliation with Contractor, even if occasioned by Contractor's breach or wrongful termination.

The undersigned recognizes that the disclosure of information may give rise to irreparable injury to The IBAC agencies, a client or customer of The IBAC agencies, or to the owner of such information, inadequately compensable in damages and that, accordingly, The IBAC or such other party may seek and obtain injunctive relief against the breach or threatened breach of the within undertakings, in addition to any other legal remedies which may be available. The undersigned acknowledges that he or she may be personally subject to civil and/or criminal proceedings for such breach or threatened breach.



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Date

## **PROPOSAL SUBMITTAL REQUIREMENTS AND CHECKLIST**

Please submit your **completed** proposal, including the following items. Note that the requested information is mandatory and **failure to submit these items with your response may deem it non-responsive and may be disqualified.**

- Acknowledgement of Receipt, **Completed and SIGNED**
- Letter of transmittal, **Completed and SIGNED**
- Evaluation Criteria Documentation, including all completed Attachments
- Price Proposal, **Completed and SIGNED**
- Completed Conflict of Interest and Debarment/Suspension Form, **Completed and SIGNED**
- Campaign Contributions Disclosure Form, **Completed and SIGNED**
- Statement of Confidentiality, **Completed and SIGNED**
- Resident Contractor (or Veteran Resident Contractor) Preference Certificate – if applicable
- Addendums (if applicable) – **before** submitting your proposal, please check for addendums here:  
<http://www.aps.edu/procurement/current-bids-and-rfps>
  
- The following RFP information must be clearly labeled on the **outer envelope of your sealed proposal**.  
**Please note: If you put your sealed proposal inside a FedEx, UPS, etc. envelope, all of this information must also be written and visible on the outermost envelope** of your sealed proposal:
  - Offeror's Business Name** (not an individual's name)
  - RFP Number & Title
  - RFP Due Date & Time
  - Proper Delivery Address (see cover page)

*\* If items are not completed as required, your proposal may be deemed non-responsive.*