



NEW MEXICO DIVISION OF  
VOCATIONAL REHABILITATION

PUBLIC EDUCATION DEPARTMENT

**Request for Informal Proposals**  
**State Independent Living Council Coordinator**  
**February 2023**

## **I. SCOPE OF WORK/DELIVERABLES/MEASURABLE OUTCOMES**

### **1. Scope of Work.**

The Contractor shall perform the following work:

#### **A. State Plan for Independent Living (SPIL):**

1. The Contractor shall assist the State Independent Living Council (SILC) and New Mexico Division of Vocational Rehabilitation (Agency) in preparing and updating the State Plan for Independent Living (SPIL) every three years and/or as requested by the Administration of Community Living (ACL) by:
  - a. Working Collaboratively with the SILC, Centers for Independent Living (CILS), Agency and Client Assistance Program (CAP).
  - b. Conducting Public Hearings within the State of New Mexico when renewing or amending the SPIL as required by 34 C.F.R. Section 364.20 (g) by:
    - 1) Collaborating with the SILC and CILS to determine the number of public hearings that are to be held, the geographic locations, and the time and dates the public hearings will be held.
    - 2) Obtaining accessible facilities to hold the public hearings.
    - 3) Advertising the public hearings per New Mexico State Statute Section 10-15-1 NMSA 1978 (the Open Meetings Act) and Section 14-4-1 NMSA, 1978, (the State Rules Act) as applicable.
    - 4) Ensuring that materials for the public hearings are available in alternative formats when requested by a SILC Member and or public participant.
    - 5) Ensure that reasonable accommodation requests by SILC Members or public participants are scheduled and available.
    - 6) Facilitate and administer the public hearing.
    - 7) Record the public hearing/meetings and transcribe the public comments within ten (10) days of the public hearing date.
    - 8) Gather public hearing comments in written form to be included in the SPIL.
  - c. Obtain signatures of the SILC Chairperson, CILS, and Agency after the SPIL has been approved by the SILC.
  - d. Provide the final SPIL with original signatures to ACL and make copies available to SILC Members, in alternative accessible formats as requested.
  - e. Review the SPIL at the SILC quarterly meetings to ensure the goals and objectives are being met.

- f. Assist the SILC with any SPIL revisions.
  - g. Submit all documentation related to the SPIL to the Agency.
2. Under the direction of the SILC, the Contractor shall assist the SILC in achieving the goals and objectives set forth in the approved SPIL and in compliance with Section 704, and 705 of the Rehabilitation Act of 1973 as amended.
- a. Per Section 705 of the Rehabilitation Act as amended, the SILC is responsible for filling out the monthly Contractor work assignment form.
  - b. The Contractor shall carry out the work on the work assignment form.
  - c. The Contractor will submit a copy of the work assignment form to the Chair of the SILC for approval, the Chair will then submit the form to Agency when the invoice is due.
3. Should the SILC request the Contractor to work on a special project(s) not included in the approved SPIL, the Contractor with the SILC, will communicate to the Agency the following information prior to working on the special project(s).
- a. Purpose of the project.
  - b. Time required.
  - c. Estimated cost and funding source.
  - d. Agency will ensure that the SILC special project(s) are in compliance with Federal Rules and Regulations pertaining to allowable costs and activities. 2 CFR Sections 200.403-405
  - e. The Contractor will provide the Agency with documentation related to the special project.

#### B. Annual 704 Performance Report

1. The Contractor will assist the SILC and Agency in preparing the Federal Annual 704 Performance Report.
  - a. The Contractor will work with SILC, CILS, and Agency to gather the fiscal data (October 1 - September 30) for the SILC portion of the report.
  - b. The Contractor will obtain the necessary signatures from the SILC Chairperson and Agency after the report has been approved by SILC and Agency prior to submitting to the Rehabilitation Service Administration (RSA).
2. The Contractor will provide copies of the submitted 704 Report to Agency as well as the SILC Members in alternative/accessible formats as requested.

### C. SILC By-Laws

1. The Contractor will assist the SILC in updating and amending By-Laws as requested and/or as needed.
2. The Contractor will obtain the appropriate signatures for the approved amendments to the SILC By-Laws.
3. The Contractor will provide to the SILC Members a copy of the approved and signed By-Laws in an alternative, accessible format as requested.
4. The Contractor will submit a copy of the amended By-Laws to the Agency.

### D. SILC Membership

1. The Contractor will maintain files for each SILC Member:
  - a. Contact information
  - b. Appointment and reappointment letters
  - c. Resignation letters
  - d. Un-appointment letters
  - e. Travel and per diem reimbursements
  - f. Trainings
2. The Contractor under the direction of the SILC will coordinate with the Governor's Office regarding SILC Membership appointments, reappointments, and recruitments in accordance with SILC Policies and Procedures.
3. The Contractor will provide to Agency documentation regarding agendas, minutes, updated membership lists etc. related to the SILC.

### E. SILC Meetings

1. The Contractor will coordinate all of SILC's meetings in compliance with the Americans with Disabilities Act, the New Mexico Open Meetings Act, the SILC By-laws, the SILC Policies and Procedures, and the SPIL as applicable per state and federal laws and regulations.
  - a. Establish the dates and locations for the quarterly meetings for the fiscal year (October 1st -September 30<sup>th</sup>).
2. The Contractor shall prepare and distribute all pre and post meeting materials.
  - a. Advertise the SILC Quarterly meetings per the requirements of the New Mexico Open Meetings Act using legal ads in a local newspaper, social media, etc.

- b. Send out agenda and minutes from previous meetings along with any other pertinent information to the SILC Members one week prior to the Quarterly Meeting.
  - c. Request quarterly reports from each of the CILS prior to the SILC Quarterly meeting.
3. The Contractor will ensure that all meeting materials will be available in accessible formats (large print, braille, CD, etc.) as requested ten (10) days prior to the meeting date.
4. The Contractor will arrange for all sign language interpreters ten (10) days prior to the Quarterly meeting.
5. The Contractor will take notes at the quarterly meeting. If the Contractor is unable to take notes, the Contractor will make arrangements to have the SILC meetings recorded and transcribed.
6. The Contractor will submit all original invoices/receipts from organizations, companies, and individuals that might provide sign language services and any other meeting services as needed to the Agency.
7. The Contractor will ensure that the meeting minutes will be transcribed on or before ten (10) days of the meeting date.
8. The Contractor will submit all documentation (minutes, reports, agendas, advertisements, etc.) related to the SILC Meetings to Agency.

#### F. SILC Policy and Procedures

1. The Contractor will assist the SILC in updating/amending the SILC's Policy and Procedure Manual as needed.
2. The Contractor will provide the final approved amendments to the Policy and Procedures Manual to each SILC Member in alternative/ accessible formats as requested.
3. The Contractor will submit any amendments to the SILC Policy and Procedures Manual to the Agency.

#### G. SILC Orientation Manual

1. The Contractor will assist the SILC in updating/amending the SILC Orientation Manual as needed.
2. The Contractor will submit the approved amendments to the SILC Orientation Manual to each SILC Member in an alternative/accessible format as requested.
3. The Contractor will review the SILC Orientation Manual with the SILC Members when requested and necessary.
4. The Contractor will provide the Agency with a copy of the amended SILC Orientation Manual.

## H. SILC Website

1. Currently the SILC does not have its own website. Contractor will use the Agency's website to post meetings on their website under the SILC section.
2. The Contractor will explore the different avenues for a website including working with the Agency's technology staff on expanding the SILC's page on the Agency Website.

## I. Financial Responsibilities and Reporting

1. The Contractor will prepare a monthly expenditure report separating each cost by line item.
2. The Contractor will keep track of their work activity per Paragraph 1, Scope of Work.
3. The Contractor will submit all required documentation per Paragraph 1, subparagraphs I thru X (Scope of Work), which includes all supportive documents for goods and services along with the payment request invoice on or before the 15<sup>th</sup> day of each month. If the 15<sup>th</sup> day falls on a holiday, weekend or if state offices are closed for a reason, the Contractor will submit all the documents to the Agency prior to close, or 5:00 pm of the next business day.
4. The Contractor will provide the SILC Members with the following reports quarterly or as requested.
  - a. Budget expenditure and activity report.
5. The Contractor will submit a budget narrative annually to Agency.
  - a. Work with the SILC to determine the budget.
  - b. The SILC will review and approve the budget.
  - c. The SILC Chairperson will sign the budget narrative.
6. The Contractor will work with the SILC to draft and submit a Budget Adjustment Request (BAR) as needed. (All budget adjustment requests will be accompanied with a letter of justification).
  - a. Work with the SILC to determine the purpose and amount of the requested BAR.
  - b. Present the BAR to the SILC for approval.
  - c. Have the SILC Chairperson sign the BAR to be submitted to the Agency.

## J. Contractor Evaluation

1. The Contractor's work performance will be evaluated annually by the SILC Members per Section 705 (e)(2) of the Rehabilitation Act as amended.

## II. INFORMATION

The NMDVR anticipates awarding a contract with a two (2) year term, on a year-by-year basis, at the NMDVR's discretion. The start date for each contract will vary, based upon evaluation of informal proposals and construction of agreements.

## III. PROPOSAL EVALUATION CRITERIA

While this is an informal solicitation, interested SILC Coordinator Contractors must submit a proposal responding in the form of a thorough narrative to each evaluation factor below. Proposals will be evaluated and reviewed, taking into consideration the evaluation factors. Contract award will be based on a contractor's ability to meet the required criteria, reasonably proposed costs and qualifications.

### A. Contractor Experience

Contractors must provide information about their experience that demonstrates the ability to provide professional, sufficient, competent work product, meet time schedules, accommodate cost considerations and project administration requirements. Indicate the relationship of the scope of work in this solicitation to other current or past contracts or projects. Indicate proposed work schedules and milestones, with completion methods and strategies. Demonstrate or indicate project team organization and working relationships.

### B. Contractor Qualifications

Contractors must submit a list, with resumes, of all proposed professional team members, including any subcontractors, who will be performing services under this Agreement. The list shall include an attached narrative that describes the specific relevant experience of each team member, including subcontractors, if any, in relation to the role that the member will perform under this Agreement. The narrative shall include the name of each person and a thorough description of her or his education, knowledge, areas of expertise, relevant experience and any certifications or other professional credentials.

### C. Contractor's Understanding of Objectives and Approach to the Scope of Work

Contractors must explain their understanding, or familiarity, with the desired scope of work, or similar works, based on past experience. Contractor's must provide a **thorough** narrative describing the approach they will use to accomplish the Scope of Work, considering all SILC curriculum. Milestone charts may be used to describe the tasks to be performed, the time frame for each task and the proposed staff member, including subcontractors if any,

designated for the completion of each task. Whether a milestone chart is used or not, the Contractor should clearly explain his/her approach to fulfilling the Scope of Work.

#### **D. Cost**

Contractors shall propose **a monthly, firm, fixed, fully loaded lump sum cost proposal.** Cost proposals shall include travel to and from the off-site workplace to the on-site workplace, if applicable. The monthly, firm, fixed, fully loaded lump sum cost proposal should be itemized, listing in detail, at a minimum:

- Hourly rates to be charged by type of personnel, including sub-contractors if applicable;
- Number of monthly hours, per staff member, estimated to complete the Scope of Work (this may be presented in phases of the work);
- Additional items including, but not limited to, travel, per diem, fringe benefits and overhead.

The Contractor shall include any other expense not mentioned above. Hourly rates per staff member, the number of hours per staff member, and additional monthly costs must calculate and equate to the Contractor's monthly, firm, fixed, fully loaded lump sum cost proposal. Cost proposals shall exclude applicable New Mexico Gross Receipts tax and shall be valid for sixty (60) days subject to all action by the NMDVR.

### **IV. PROPOSAL FORMAT AND SUBMISSION**

All informal proposals must be typewritten on standard 8 1/2 x 11 paper, with tabs delineating each section. Offerors must limit their proposals to twenty (20) pages.

#### **A. Proposal Organization**

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

1. Letter of Transmittal
2. Table of Contents
3. Response to Evaluation Criteria
  - a. Contractor Experience
  - b. Contractor Qualifications
  - c. Contractor's Understanding of Objectives and Approach to the Scope of Work
  - d. Cost Proposal

Within each section of their proposal, Offerors should address the items in the order in which they appear in this Request for Informal Proposals. Any proposal that does not adhere to these requirements may be rejected.



**B. Letter of Transmittal**

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

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

**C. Proposal Submission**

Each Offeror must provide one electronic copy of their proposal in PDF format. NMDVR reserves the right to reject any and all informal proposals in part or in whole. All proposals must be received by the NMDVR Procurement Section no later than 3:00 P.M. (MDT/MST, whichever is in effect) on Friday, March 10, 2023. Proposals must be emailed to the attention of Joseph “Joby” Padilla at:  
[Joseph.Padilla@dvr.nm.gov](mailto:Joseph.Padilla@dvr.nm.gov).

**VII. STEVENS AMENDMENT NOTICES**

Public Law 101-166 Notice: The New Mexico Division of Vocational Rehabilitation receives federal funds from the U.S. Department of Education and from the Health and Human Services Department. for Federal Fiscal Year 2022, the Division will receive approximately \$21,389,100 for Vocational Rehabilitation with a \$5,825,500 state match: \$892,700 for Independent Living with a \$642,200 State match.

## **APPENDIX A: SAMPLE CONTRACT**

STATE OF NEW MEXICO

### **New Mexico Division of Vocational Rehabilitation**

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **New Mexico Division of Vocational Rehabilitation**, 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 General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work:

A. State Plan for Independent Living (SPIL):

1. The Contractor shall assist the State Independent Living Council (SILC) and New Mexico Division of Vocational Rehabilitation (Agency) in preparing and updating the State Plan for Independent Living (SPIL) every three years and/or as requested by the Administration of Community Living (ACL) by:
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    - 3) Advertising the public hearings per New Mexico State Statute Section 10-15- 1NMSA 1978 (the Open Meetings Act) and Section 14-4-1 NMSA, 1978, (the State Rules Act) as applicable.
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- 6) Facilitate and administer the public hearing.
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  - a. Agency will ensure that the SILC special project(s) are in compliance with Federal Rules and Regulations pertaining to allowable costs and activities. 2 CFR 200.403-405
  - d.
  - e. The Contractor will provide the Agency with documentation related to the special project.

## B. Annual 704 Report

1. The Contractor will assist the SILC and Agency in preparing the Annual 704 Federal Report.
  - a. The Contractor will work with SILC, CILS, and Agency to gather the fiscal data (October 1 - September 30) for the SILC portion of the report.
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3. The Contractor will provide copies of the submitted 704 Report to Agency as well as the SILC Members in alternative/accessible formats as requested.

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4. The Contractor will provide the SILC Members with the following reports quarterly or as requested.
  - a. Budget expenditure and activity report.
5. The Contractor will submit a budget narrative annually to Agency.

- a. Work with the SILC to determine the budget.
  - b. The SILC will review and approve the budget.
  - c. The SILC Chairperson will sign the budget narrative.
6. The Contractor will work with the SILC to draft and submit a Budget Adjustment Request (BAR) as needed. (All budget adjustment requests will be accompanied with a letter of justification)
- a. Work with the SILC to determine the purpose and amount of the requested BAR.
  - b. Present the BAR to the SILC for approval
  - c. Have the SILC Chairperson sign the BAR to be submitted to the Agency.

J. Contractor Evaluation

1. The Contractor's work performance will be evaluated annually by the SILC Members per Section 705(e)(2) of the Rehabilitation Act as amended.

2. **Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed, working between 30 to 40 hours per week, at the rate of **enter amount** (\$0.00) per hour, such compensation not to exceed **enter amount**, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling **enter 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 enter 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 GSD/SPD. 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 GSD/SPD Contracts Review Bureau. 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 thirty (30) 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 and the federal government for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature and/or the federal government, 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 legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

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

A. If 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:

Email:

Cell:

To the Contractor:

Email:

Phone:

**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.

**26. Debarment and Suspension.**

The Agency is prohibited from contracting with entities that have been listed on the government-wide exclusions in the System for Award Management (SAM) pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp. p. 189) and 12689 (3 CFR part 1989 Comp., p. 235). Contractor affirms that it is not listed on the System for Award Management. Contractor further agrees to immediately notify the Agency should it be listed on the System for Award Management at any time during the term of this Agreement. The Agency shall also monitor the System for Award Management and this Agreement shall be terminated immediately on written notice should Contractor be listed on the System for Award Management.

**27. Prohibition of Certain Telecommunications Equipment and Services.**

The Contractor certifies and warrants that no part of the Agreement uses covered telecommunications equipment or services as a substantial or essential component of the Agreement, or as critical technology as part of the Contractor's business. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

**28. Compliance with Laws.**

The Contractor shall be responsible for complying with any and all applicable federal, state, and local laws, codes, and regulations in connection with this Agreement which are in effect at the time of contract execution, including but not limited to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

**29. Whistleblower Protection.**

No employee of the Contractor may be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a federal or state agency information that the employee reasonably believes is evidence of mismanagement of a federal contract or grant, a waste of state or federal funds, an abuse of authority relating to a federal contract or grant, a danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract or grant.

**30. Workplace Safety.**

A. The Contractor shall incorporate by reference the requirements of Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. §651 et seq., and implementing regulations, 29 CFR Part 1910. The Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance, and its subcontractor's compliance, with the applicable requirements of OSHA and implementing regulations.

B. The Contractor shall work to ensure the safety of participants and the public. The Contractor shall ensure that health and safety risks are minimized to maintain a productive customer experience for its participants and members of the public.

**THIS SPACE LEFT BLANK INTENTIONALLY**

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

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

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

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

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

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

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

By: \_\_\_\_\_  
Contractor

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

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:

By: \_\_\_\_\_  
Taxation and Revenue Department

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

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

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

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