

**GENERAL SERVICES DEPARTMENT
RISK MANAGEMENT DIVISION**

REQUEST FOR PROPOSALS (RFP)

Adjuster Services



RFP#

20-350-4905-0001

Issue Date: March 8, 2019

Due Date: April 22, 2019

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of claims adjusting services to the Agency's Property and Casualty Bureau.

B. BACKGROUND INFORMATION

The Agency's Property and Casualty Bureau receives, evaluates, pays or denies all liability and property claims made by or against insured entities subject to Risk Management Director (RMD) Director approval. The Agency's Property and Casualty Bureau assists its in-house and contract attorneys in the legal defense of insured public entities when lawsuits are filed against them. The Agency's Property and Casualty Bureau, together with the Agency, seeks to protect the State of New Mexico's assets and uses the services of the adjusters for these purposes.

C. SCOPE OF PROCUREMENT/SCOPE OF WORK

The term of the resulting contract will be for four (4) years. If awarded, a contract, Offeror(s) agree to provide claims adjusting services as set forth in Section I, Paragraph C of this RFP. This procurement will result in a multiple source award.

In accordance with the authority extended by NMSA 13-5-1 et.seq. and 15-7-1 et.seq., and the General Services Department's Strategic Plan, which mandates Risk Management Division to protect and conserve the State of New Mexico's human and physical resources and financial assets by providing multi-lines insurance coverages and legal defense, and in support of the Risk Management Division's core obligation to serve public entities and protect the Public Property Reserve and Public Liability funds, Contractor agrees to provide the following: Provide Adjuster services as set forth in Section 1, Paragraph B of the Request for Proposal ("RFP") issued by RMD and Contractor's Proposals. The RFP and the Proposals are hereby incorporated into this agreement to the extent their provisions are not inconsistent with the Agreement. Services will be performed at various geographic locations throughout the State.

An evaluation of the Contractor's services that have been delivered under this Agreement will be monitored by the Agency's Internal File Handlers and undertaken by the Manager of the RMD Property and Casualty Bureau from time to time at the discretion of RMD. The Contractor's evaluation will be based on the quality of performance undertaken in one or more closed case(s) that are chosen at the discretion of the Manager of the RMD Property and Casualty Bureau. The following factors will be evaluated as to quality and timelines:

- a. Acknowledgment of assignments shall be confirmed within three (3) business days of assignment.
- b. Reports will be timely transmitted electronically in the format directed by the Agency's internal file handler and contain quality information, i.e. coverage, site visits, photos, document collection, interview statements, liability assessments, reserve recommendations, and next report due date.

- c. Adjusters shall identify potential sources of defense and indemnity protection and issue timely tenders to the responsible party and that party's insurer, with copy to the Agency's internal file handler.
- d. Adjusters shall initiate subrogation attempts with appropriate follow-up (upon immediate determination of subrogation interests). This includes putting the adverse carrier on notice.
- e. In appropriate circumstances, Adjusters shall recommend to the Agency's internal file handler that a claim be denied. At the direction of the Agency's internal file handler, the Adjuster shall issue notice of denial to the insured or third party claimant with copy to the Agency's internal file handler and insured agency contact.
- f. Adjuster(s) must agree to execute the HIPAA Business Associates Agreement included in Appendix G.
- g. Professionalism must be displayed during course of adjusting with the States' insured entities.

Geographically, services are required throughout the State of New Mexico. At the direction of the Agency's internal file handler, Contractors shall investigate and adjust claims against state insured entity for personal liability, casualty liability, or property losses or damages. Contractors shall examine claims forms and other records to determine insurance coverage and identify other potential sources of defense and indemnity protection. Contractor shall interview, either by person, telephone or correspondence, claimant and witnesses. Contractor shall consult with police and medical professional personnel to request copies of pertinent records for review. Contractor shall inspect property for damages to determine extent of agencies liability, varying the method of investigation according to the requirements of the type of insurance involved. Contractor shall assist the Agency in pursuing subrogation, salvage or other recovery methods at the direction of the Agency's internal file handler. At the discretion of RMD, Contractor shall negotiate settlement with claimant. Contractor shall return reports to the Agency in the form and manner as directed by the Agency. Contractor must be licensed, and is constrained by the procedures and requirements of state statute NMSA 1978, Section 59A-11-1 et.seq. If called upon by the Agency's defense attorneys for assistance, Contractor shall cooperate fully with defense counsel.

Any professional services contract entered into as a result of this procurement shall not become effective until approved in writing by the Department of Finance and Administration (DFA). The contract shall not exceed four (4) calendar years in term.

D. PROCUREMENT MANAGER

1. General Services Department, Risk Management Division has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number, and e-mail address are listed below:

Name: Laura Romero, Procurement Manager
 Address: GSD/RMD
 Joseph Montoya Building
 1100 St. Francis Drive, Room 2073
 P.O. Box 6850
 Santa Fe, NM 87502
 Telephone: (505) 827-0463
 Email: laura.romero1@state.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: Laura Romero
Reference RFP Name: Adjuster Services RFP # 20-350-4905-0001
Address: Risk Management Division
1100 St. Francis Dr. Room 2073
Santa Fe, New Mexico 87505

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the State Purchasing Division (SPD). **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to the Procurement Manager be considered properly submitted.

E. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“**Agency**” means the Risk Management Division of the General Services Department or that State Agency sponsoring the Procurement action.

(Ensure definition is appropriately placed in sample contract pro-forma as required).

“**Award**” means the final execution of the contract document.

“**Business Hours**” means 8:00 AM through 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Confidential**” means confidential financial information concerning offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

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

“**Contractor**” means any business having a contract with a state agency or local public body.

“**Deliverable**” means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

“**Determination**” means the written documentation of a decision of a procurement officer 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," "preferably," or "prefers" identify a desirable or discretionary item or factor.

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

“**DFA/CRB**” means the Contracts Review Bureau of the Department of Finance and Administration for the State of New Mexico.

“**Electronic Version/Copy**” means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain. The digital form may be submitted using a compact disc (cd) or USB flash drive. **The electronic version/copy can NOT be emailed.**

“**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.

“**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

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

“**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

“**Insured Entity**” means state agency and employee, local public bodies and employees and institutions of higher education statewide.

“**IT**” means Information Technology.

“**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.

“**Minor Technical Irregularities**” means anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“**Multiple Source Award**” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.

“**New Mexico Employee**” means any resident of the State of New Mexico, performing the majority of their work within the State of New Mexico, for any employer regardless of the location of the employer’s office or offices.

“Offer” means to make available to all New Mexico employees, without unreasonable restriction, enrollment in one or more health coverage plans and to actively seek and encourage participation in order to achieve the goals of the Executive Order. This could include State publicly financed public health coverage programs such as *Insure New Mexico!*

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

“Procurement Manager” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

“Program Manager” means the individual selected by the Agency to monitor and manage all aspects of the contract resulting from this RFP.

“Procuring Agency” means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.

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

“Requirements” are obligatory and mean the system functions that are related to the organization’s goals and business opportunities. Requirements are defined by the project team and are usually prioritized.

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

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

“Sealed” means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.

“Solicitations” means RFPs.

“SPD” means State Purchasing Division of the New Mexico State General Services Department.

“**Staff**” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.

“**State**” or “**the State**” means the State of New Mexico.

“**State Agency**” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative, or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent, but does not include Local Public Bodies.

“**State Purchasing Agent**” means the director of the purchasing division of the general services department.

“**Statement of Concurrence**” means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g. “We concur”, “Understands and Complies”, “Comply”, “Will Comply if Applicable” etc.)

“**Written**” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

F. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:

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

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description and conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	GSD/RMD	Fri., March 8, 2019
2. Acknowledgement of Receipt forms	Potential Offerors	Mon., March 18, 2019
3. Deadline to submit Questions	Potential Offerors	Mon., April 1, 2019
5. Response to Written Questions	Agency	Mon., April 8, 2019
6. Submission of Proposal	Potential Offerors	Mon., April 22, 2019
7. Proposal Evaluation	Evaluation Committee	Tue.& Wed, April 23-24, 2019
8. Selection of Finalists	Evaluation Committee	Wed., April 24, 2019
11. Finalize Contracts	Agency	Through June 28, 2019
12. Contract Awards	Agency	July 1, 2019
13. Protest Deadline		+15 days

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State General Services Department, Risk Management Division on March 8, 2019.

2. Acknowledgement of Receipt

Potential Offerors should hand deliver, return by facsimile, e-mail or send registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MST or MDT on Monday, March 18, 2019.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a

presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 3:00 PM, Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

4. Response to Written Questions

Written responses to written questions and any RFP amendments will be distributed on the date described in Section II. A. to all potential offerors whose organization name appears on the procurement distribution list and who provided the acknowledgement of receipt form as described in Sec. II. A., by the deadline.

5. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MOUNTAIN STANDARD TIME ON **Monday, April 22, 2019. *Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.***

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2 (except for electronic submissions through SPD's electronic procurement system). Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **Adjuster Services RFP # 20-350-4905-0001**. Proposals submitted by facsimile, or other electronic means other than through the SPD electronic e-procurement system, will not be accepted.

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 state agency signature on the contract(s) resulting from the procurement has been obtained.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and

evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

7. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II. A., Sequence of Events or as soon as possible.

8. Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Agency Procurement office. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

9. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II. A., Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of the relevant Agency Procurement office.

The contract shall be awarded to the Offerors whose proposals are most advantageous to the State of New Mexico and the General Services Department, Risk Management Division taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

10. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Clinton Nicley
P.O. Box 6850
Santa Fe, NM 87502

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

Any cost incurred by the 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. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state agency which may derive from this RFP. The state agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

- A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. 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.
- C. Confidential data is restricted to:
 - 1. confidential financial information concerning the Offeror's organization;
 - 2. and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.
 - 3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the State Purchasing Division or the Agency shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

13. Governing Law

This RFP and any agreement with an Offeror which may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Sample Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Sample Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX C) strongly enough to propose alternate terms and

conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. Please see Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will 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.

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

21. Notice of Penalties

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

22. Agency Rights

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

23. Case/Claim Assignments

This RFP does not constitute a Grant to the Offeror of any right to handle any specific case or any specific number of cases. RMD may, in its sole discretion, assign or reassign cases as it deems expedient. By signing the agreement, the offeror agrees that RMD does not guarantee the assignment of any cases or any payment. Whenever the Offeror is assigned a case by RMD but decides it is unable or unwilling to accept the case assignment, the Offeror shall promptly enter an appearance and protect the rights of RMD and its insured until substitute adjuster is assigned.

24. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

25. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico.

26. Confidentiality

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

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

27. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

28. Use of Electronic Versions of this RFP

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 the agency, the Offeror acknowledges that the version maintained by the agency shall govern.

29. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for 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. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://www.insurenewmexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

30. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX B, as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and

Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

31. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. **Explicitly** indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. **Explicitly** indicate acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in para 2 above.

32. Pay Equity Reporting Requirements

- A. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local vendor.
- B. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- C. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

- D. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offeror will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

33. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

- c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

34. New Mexico Preferences.

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue website at: <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference – OR -

B. New Mexico Resident Veterans Business Preference

In addition to a copy of the certification, the Offeror should sign and complete the Resident Veterans Preference Certificate form, as provided in this RFP.

An agency shall not award a business both a resident business preference and a resident veteran business preference.

The New Mexico Preferences shall not apply when the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one (1) proposal in response to this RFP.

B. NUMBER OF COPIES

1. Hard Copy Responses

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The original copy shall be clearly marked as such on the front of the binder. Envelopes, packages or boxes containing the original must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors shall deliver:

1. **Technical Proposals** – One (1) ORIGINAL, two (2) HARD COPIES, and one (1) electronic copy of the proposal containing ONLY the Technical Proposal; ORIGINAL and COPY shall be in separate labeled binders. **The electronic version/copy can NOT be emailed.**
 - Proposals containing confidential information **must** be submitted as two separate binders:
 - **Unredacted** version for evaluation purposes
 - **Redacted** version (information blacked out and not omitted or removed) for the public file

The electronic version/copy of the proposal **must** mirror the physical binders submitted (i.e. One (1) **unredacted cd/usb**, one (1) **redacted cd/usb**). **The electronic version can NOT be emailed.**

The original, hard copy and electronic copy information **must** be identical. In the event of a conflict between versions of the submitted proposal, the Original hard copy shall govern.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Hard copies must be typewritten on standard 8 ½ x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

Organization of folders/envelopes for hard copy proposals and electronic copy proposals and proposals submitted via eProNM:

1. Proposal Content and Organization

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

TAB #1

- a) Letter of Transmittal
- b) Table of Contents
- c) Summary of proposed services
- d) Response to mandatory specifications
- e) Statement of Concurrence

TAB #2

- f) Response to Agency Terms and Conditions
- g) Offeror's Additional Terms and Conditions
- h) Campaign Contribution Form
- i) Employee Health Coverage Form

TAB#3

- j) Other supporting material (optional)

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

IV. MANDATORY SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each specification, unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

A. Experience

Offerors must submit a narrative of relevant experience, including experience of subcontractors and staff members. The documentation must thoroughly describe how the Offeror has supplied expertise for similar contracts and work related to adjusting services in the area of general liability.

Offerors should include in their proposals samples of work performed to include property reports, liability reports, coverage determinations, etc. from previous clients. Offerors may redact any confidential information. Offerors should include professional references reflecting positive comments on experience and expertise.

B. Cost

Compensation for work performed and travel time – Offerors will be compensated at an hourly rate of \$80.00. Offerors must execute the Concurrence form attached as Appendix I. This flat rate shall include the following: travel time, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel, if appropriate. New Mexico Gross Receipts Taxes are excluded from the hourly rate, and shall be shown separately on each invoice.

Mileage Reimbursement – Upon submission of sufficient documentation in a form prescribed by the Agency, mileage will be reimbursed at the rate published by the Internal Revenue Service.

Other pre-approved expenses – Under extraordinary circumstances, the Agency, in its sole discretion, may choose to reimburse Offerors for meals, lodging, and/or other expenses. Requests for reimbursement must be: 1) pre-approved by the Agency prior to such expenditure; and 2) accompanied by sufficient documentation in a form prescribed by the Agency. The Agency reserves the right to not reimburse Offerors for these types of expenses at any time.

C. Licensure and Bonding

As required by NMSA 1978, Section 59A-13-4 and following, Offerors must possess a valid New Mexico Adjusters License. Offerors must possess comprehensive general liability (including errors and omissions) coverage, workers' compensation coverage, and must be bonded. Prior to receiving a contract, the Contractor shall furnish RMD copies of current licenses and copies of current certificates of required insurance and bonding in a form satisfactory to RMD (or copies of insurance policies if RMD so requests). Proof of such

insurance and bonding shall be deemed satisfied by submitting of a copy of the offeror's current insurance declarations page along with the Proposal.

D. Organizational References

Corporate Experience:

Offerors must submit a statement of relevant corporate experience within the last five (5) years, including the experience of major subcontractors. The narrative in response to this factor must thoroughly describe the Offeror's experience with Adjusting.

In this Section, the Offeror shall provide the following information (referencing the subsections in sequence) to evidence the Offeror's experience in delivering services such as those sought under this RFP:

- a. A brief statement of how long the Offeror has been performing the services sought under this RFP.
- b. A description of the experience level, technical and application knowledge, and government experience of the corporate technical resources that may be used for the contract.
- c. The dates of the period of service.
- d. A description of the service provided.
- e. A statement of why the Offeror believes this engagement constitutes relevant corporate experience to this procurement.
- f. A list, if any of all current contractual relationships with the State of New Mexico or those completed within the previous five-year period. The listing should include the contract number, contract term, and procuring State agency for each reference.

Corporate References:

Offerors must submit at least one (1) external corporate reference from clients who have received similar services to those proposed by the Offeror for this contract, especially those projects in the public sector that have occurred within the past five (5) years. Offerors that propose to use Subcontractors for significant portions of the scope of work must include one (1) external reference for each Subcontractor. Each reference must include the name of the company, company current address, name of the contact person, telephone number, and the date and description of the services provided.

In addition, Offerors must submit three (3) external references for senior corporate management proposed to be responsible for the Contractor's performance, and empowered by the Contractor to legally bind the Contractor on this Contract. Each reference must include the name of the company, company current address, name of the contact person, telephone number, and the date and description of the services provided.

Note: The Offeror is responsible for verifying reference contact information. The Evaluation Committee is not obligated to try to locate persons not found at the numbers or places given in the proposals. Obsolete or wrong Contact information could result in a zero score in this category.

Financial and Corporate Stability of Offeror

Offerors must submit copies of their organization's most recent years independently audited financial statements, as well as those for the preceding two (2) years. The financial statement submitted must be solely for the Offeror, unless a parent entity is also committing to back financially the Offeror in performance of the contract, in which case the financial statements of the parent entity must also be provided.

The submissions must include the audit opinion, the balance sheet, statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist for the Offeror, the Offeror shall state the reason and instead submit sufficient information to enable the Evaluation Committee to determine the financial stability of the Offeror.

Offerors must also submit information regarding any mergers, acquisitions, or sales of the Offeror or subcontracting companies within the last five years, or if any are pending or being negotiated and if so, an explanation providing relevant details.

Offerors must provide a statement as to whether there is any pending litigation against the Offeror, and if such litigation exists, attach an opinion of counsel as to whether the pending litigation may impair the Offeror's performance in a contract under this RFP. Likewise, Offerors must provide a statement as to whether the Offeror or any of the Offeror's employees, agents, independent contractors, or subcontractors have been convicted of, pled guilty to, or pled *nolo contendere* to any felony, and if so provide an explanation with relevant details.

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

Offeror Staff Experience

The Offeror must provide a list of all Contractor staff, including clerical staff and personnel required to complete the Contractor responsibilities described in this RFP. The Offeror must provide a detailed staff resume, as well as a staff qualification narrative summary, for each proposed team member.

Offeror Staff References

1. The Offeror shall provide the names, positions, and current telephone numbers of clients who can give information on the individuals' experience and competence. Three references must be provided for each proposed core staff member.
2. Staff references to other personnel within the Offeror's organization (or parent organization) are unacceptable. Such references will not be contacted and the Offeror shall receive no credit for that reference.
3. Descriptions of experience shall include specific responsibilities and number of years including the role and percentage of time spent on specific projects. All percentages should be based on months of full days five (5) day weeks.
4. Each project reference in a resume should include the customer name and dates of the project, as well as a brief project description, including the scope of the project.

Note: The Offeror is responsible for verifying reference contact information. The Evaluation Committee is not obligated to try to locate persons not found at the numbers or places given in the proposals. Obsolete or wrong contact information could result in a zero score in this category.

E. Business Specifications

1. Financial Stability

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g. D & B report) to enable the Evaluation Committee to assess the financial stability of the Offeror.

2. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX D. The form **must** be completed and must be signed by the person authorized to obligate the company.

3. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

4. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors must include a copy of their preference certificate in this section. In

addition, for resident Veterans Preference, the attached certification Form (APPENDIX F) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

V. EVALUATION

A. EVALUATION POINT SUMMARY

Factor	Points Available
<p>Points-Report writing services: Applicants must submit two redacted samples of recent reports with analysis of the facts involved and recommendations to resolve the claim.</p>	
<p>i. Example report to contain coverages, site visits, photos and Interview summaries</p>	200
<p>ii. Example report to contain liability assessment</p>	150
<p>iii. Example report to contain coverage determination and reasoning</p>	150
<p>Experience: Applicants must demonstrate adjusting experience in one or more of the classes of claims handled by general liability and Property claims:</p>	
<p>1. Law Enforcement</p>	80
<p>2. Civil Rights</p>	80
<p>3. General Liability and Automobile Liability</p>	80
<p>4. Property</p>	80
<p>5. Medical Malpractice</p>	80
<p>Representation of experience in these areas is not sufficient. Work product and examples need to be provided to assess the level of experience.</p>	
<p>Professional References: This criterion involves professional References reflecting positive comments on experience and expertise of the applicants in the areas mentioned in above. Additionally, professional association membership and recognition and awards can be submitted to support professional affiliations. Provide a minimum of 3 professional references with names and addresses. Please refer to Corporate and offeror staff references within the RFP for further reference descriptions.</p>	100

Total	1,000
<p>New Mexico Preferences Percentages will be determined based upon points system outlined in NMSA 1978, § 13-1-21 (as amended)</p> <p>A. New Mexico Business Preference If the Offeror has provided their Preference Certificate the Preference Points for a New Mexico Business is 5%.</p> <p>B. New Mexico Resident Veterans Business Preference If the Offeror has provided their Preference Certificate and the Resident Veterans Certification Form the Preference Point are one of the following:</p> <ul style="list-style-type: none"> • 10% for less than \$1M (prior year revenue) • 8% for more than \$1M but less than \$5M (prior year revenue) • 7% for more than \$5M(prior year revenue) 	

Table 1: Evaluation Point Summary

B. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A

REQUEST FOR PROPOSAL

ADJUSTER SERVICES

RFP # 20-350-4905-0001

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with ATTACHMENT 2.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **3:00PM, MDT/MST on Monday, March 18, 2019**. Only potential Offerors who elect to return this form completed **ON TIME** with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

—

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Laura Romero, Procurement Manager
General Services Department
Risk Management Division
1100 St. Francis Dr. Room 2073
P.O. Box 6850
Santa Fe, NM 87502
E-mail: laura.romero1@state.nm.us

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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 either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX C
SAMPLE CONTRACT

STATE OF NEW MEXICO

GENERAL SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT # _____

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **GENERAL SERVICES DEPARTMENT, RISK MANAGEMENT DIVISION**, 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 Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

In accordance with the authority extended by NMSA §§ and 13-5-1 et.seq. and 15-7-1 et.seq., and the General Services Department’s Strategic Plan, which mandates Risk Management Division to protect and conserve the State of New Mexico’s human and physical resources and financial assets by providing multi-lines insurance coverages and legal defense, and in support of the Risk Management Division’s core obligation to serve public entities and protect the Public Property Reserve and Public Liability funds, Contractor agrees to provide the following: Provide Adjuster services as set forth in Section1, Paragraph B of the Request for Proposal (“RFP”) issued by RMD and Contractor’s Proposals. The RFP and the Proposals are hereby incorporated into this agreement to the extent their provisions are not inconsistent with the Agreement. Services will be performed at various geographic locations throughout the State.

An evaluation of the Contractor's services that have been delivered under this Agreement will be monitored by the Agency’s Internal File Handlers and undertaken by the Manager of the RMD Property and Casualty Bureau from time to time in the discretion of RMD. The Contractor's evaluation will be based on the quality of performance undertaken in one or more closed case(s) that are chosen in the discretion of the Manager of the RMD Property and Casualty Bureau. The following factors will be evaluated as to quality and timeliness:

- a. Acknowledgment of assignments shall be confirmed within 3 business days of Assignment.
- b. Reports will be timely transmitted electronically in the format directed by the Agency’s internal file handler and contain quality information, i.e. coverage, site visits, photos, document collection, interview statements, liability assessments, reserve recommendations and next report due date.

- c. Adjusters shall identify potentially sources of defense and indemnity protection and issue timely tenders to the responsible party and that party's insurer, with copy to the Agency's internal file handler.
- d. Adjusters shall initiate subrogation attempts with appropriate follow-up. Upon immediate determination of subrogation interests. This includes putting the adverse carrier on notice.
- e. In appropriate circumstances, Adjusters shall recommend to the Agency's internal file handler that a claim be denied. At the direction of the Agency's internal file handler, the Adjuster shall issue notice of denial to the insured or third party claimant with copy to the Agency's internal file handler and, insured agency contact.
- f. Adjuster(s) must agree to execute the HIPAA Business Associates Agreement included in Appendix G.
- g. Professionalism must be displayed during course of adjusting with the States' insured entities.

Geographically, services are required throughout the State of New Mexico. At the direction of the Agency's internal file handler, Contractors shall investigate and adjust claims against state insured entity for personal liability, casualty liability, or property losses or damages. Contractors shall examine claims forms and other records to determine insurance coverage and identify other potential sources of defense and indemnity protection. Contractor shall interview, either by person, telephone or correspondence, claimant and witnesses. Contractor shall consult with police and medical professional personnel to request copies of pertinent records, Contractor shall review pertinent police and medical records. Contractor shall inspect property for damages to determine extent of agencies liability, varying the method of investigation according to the requirements of the type of insurance involved. Contractor shall assist the Agency in pursuing subrogation, salvage or other recovery methods at the direction of the Agency's internal file handler. Contractor shall negotiate settlement with claimant. Contractor shall return reports to the Agency in the form and manner as directed by the Agency. Contractor must be licensed and is constrained by the procedures and requirements of state statute NMSA 1978, Section 59A-11-1 et. Seq. If called upon by the Agency's defense attorneys for assistance, Contractor shall cooperate fully with defense counsel.

2. Compensation.

- A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of **EIGHTY dollars (\$80.00)** per hour for work performed and travel time, PLUS MILEAGE at the rate published by the Internal Revenue Service. At the sole discretion of the Agency, other expenses, including but not limited to lodging and meals, may be reimbursed in extraordinary circumstances if the Contractor obtains prior written approval from the Agency's internal file handler. The hourly rate of **EIGHTY dollars (\$80.00)** excludes gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement 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 DFA. 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. For each assigned claim, Contractor must submit a detailed typed statement (hand-written will not be accepted) accounting for all services performed at the prescribed hourly rate, any applicable mileage and any other pre-approved, extraordinary expenses. Invoices should be submitted along with reports. 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. **Contractor must submit a detailed MONTHLY 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.

A. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE DFA. This Agreement shall terminate **June 30, 2023** 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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 Department of Finance and Administration 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, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, 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 programs by providing each employee with, as a minimum, the following web site link to additional information:
<http://insurenwemexico.state.nm.us/>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of

the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

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

To the Agency:
Risk Management Division
Property and Casualty Bureau
P.O. Box 6850
Santa Fe, NM 87502-0110

To the Contractor:
(Insert name, address and e-mail, etc.)

26. 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 DFA Contracts Review Bureau below.

By: _____ Date: _____
Cabinet Secretary

By: _____ Date: _____
General Counsel

By: _____ Date: _____
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

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

By: _____

Date: _____

DFA Contracts Review Bureau

APPENDIX D

LETTER OF TRANSMITTAL FORM

APPENDIX D
Letter of Transmittal Form

RFP#: 20-350-4905-0001

Offeror Name: _____ **FED ID#** _____

Items #1 to #7 EACH MUST BE COMPLETED IN FULL Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

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

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Use of Sub-Contractors (Select one)

No sub-contractors will be used in the performance of any resultant contract OR

The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

7. On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

I acknowledge receipt of any and all amendments to this RFP.

_____, 2019
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

APPENDIX E

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to: Laura Romero, Procurement Manager, 1100 St. Francis Drive Room 2073, P.O. Box 6850, Santa Fe, NM 87502 **by 3:00 PM, MDT/MST Monday, April 22, 2019** for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

RFP 20-350-4905-0001
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, General Services Department, Risk Management Division via facsimile or e-mail at:

Name: Laura Romero, Procurement Manager
Address: Joseph Montoya Bldg., Room 2073
1100St. Francis Drive
P.O. Box 6850
Santa Fe, NM 87502
Telephone: 505-827-0463
Email: laura.romero1@state.nm.us

No later than April 17, 2019 and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

Company providing reference:	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	
Project description;	
Project dates (starting and ending);	
Technical environment for the project your providing a reference (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);	

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?
COMMENTS:

2. How would you rate this firm's knowledge and expertise?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are you with the products developed by the vendor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

8. With which aspect(s) of this vendor's services are you most satisfied?
COMMENTS:

9. With which aspect(s) of this vendor's services are you least satisfied?
COMMENTS:

10. Would you recommend this vendor's services to your organization again?
COMMENTS:

APPENDIX F
RESIDENT VETERANS CERTIFICATION

New Mexico Preference Resident Veterans Certification

Reminder, a copy of Resident Veterans Preference Certificate must be submitted with the proposal in order to ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended).

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

“I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

“In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under NMSA 1978, § 13-1-21 or 13-1-22, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

“I understand that knowingly giving false or misleading information on this report constitutes a crime.”

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative)* (Date)

*Must be an authorized signatory for the Business. The representations made in checking the boxes constitutes a material representation by the business that is subject to protest and may result in denial of an award or termination of award of the procurement involved if the statements are proven to be incorrect.

APENDIX G
HIPPA BUSINESS ASSOCIATE AGREEMENT

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into between the General Services Department, Risk Management Division ("Department") and (Contractor) herein after referred to as "Business Associate", in order to comply the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

BUSINESS ASSOCIATE, by a related agreement identified as: PROFESSIONAL SERVICES CONTRACT # 20-350-4905-XXXX (the "Related Agreement"), has agreed to provide services to, or on behalf of, Department (referred to in such Related Agreement as Department or the "Procuring Agency") which may involve the disclosure by the Department of other State agencies including but not limited to the New Mexico Department of Health ("NMDOH") of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in the Related Agreement, and is hereby incorporated therein.

THE PARTIES acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information (PHI) which Department, or other State agencies, may disclose to the Business Associate, or which may be created or received by the Business Associate during the course of providing legal services on behalf of the Department, other State agencies generally, and NMDOH specifically.

Under the Related Agreement, the Department may disclose to Business Associate PHI originating from other State agencies, or have the agencies disclose PHI directly to Business Associate, pursuant to the Department's duties to defend, save harmless and indemnify State agencies and their employees acting within the scope of their duties from any claim or liability covered under the Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-27.

I. DEFINITION OF TERMS

- A. **Breach** has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- B. **Business Associate** herein being the same entity as the Contractor in the Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45.CFR § 160.103.
- C. **Department** shall mean in this agreement the State of New Mexico General Services Department, Risk Management Division.

- D. **Individual** shall have the same meaning as in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).
- E. **HIPAA Standards** shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
- F. **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
- G. **Breach Notification Rule** shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- H. **Security Rule** shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
- I. **Security Standards** hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
- J. **Administrative Safeguards** shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR § 164.308.
- K. **Physical Safeguards** shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
- L. **Technical Safeguards** shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR § 164.312.
- M. **Policies and Procedures and Documentation Requirements** shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR § 164.316.
- N. **Protected Health Information** or "PHI" shall have the same meaning as in 45 CFR § 160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
- O. **Required by Law** shall have the same meaning as in 45 CFR §164.103.
- P. **Secretary** shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.

- Q. **Covered Entity** shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this agreement, shall mean the State of New Mexico Department of Health, or other State agency which meets the criteria set forth in 45 CFR §160.103.
- R. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. **General Rule of PHI Use and Disclosure** - The Business Associate may use or disclose PHI it creates for, receives from or on behalf of the Department, or other State agencies to perform functions, activities or services for, or on behalf of the Department in accordance with the specifications set forth in this Agreement, or the Related Agreement; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department or other State agencies; or as Required By Law.
1. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
 2. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the "minimum necessary," as set forth in the HIPAA Standards.
 3. The Business Associate agrees to use or disclose only a "limited data set" of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in the Related Agreement(s), except where a "limited date set" is not practicable in order to accomplish those activities.
 4. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.5020).
- B. **Safeguards** - The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this Agreement or the Related Agreement. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.

- C. Restricted Uses and Disclosures - The Business Associate shall not use or further disclose PHI other than as permitted or required by this Agreement, the Related Agreement, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
1. The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
 2. Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- D. Agents - The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- E. Availability of Information to Individuals and the Department - Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requester of such information and shall confirm to the Department in writing that the request has been fulfilled.
- F. Amendment of PHI - In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or any other State agency, to fulfill the Department or any obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.

- G. Internal Practices - Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- H. PHI Disclosures Recordkeeping - Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.
- I. PHI Disclosures Accounting - Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- J. Security Rule Provisions - As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)] , the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as "addressable" as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- K. Civil and Criminal Penalties - Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- L. Performance of Covered Entity's Obligations - To the extent the Business Associate is to carry out the Department's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- M. Subcontractors - The Business Associate shall ensure that any subcontractors that

create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. §164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate's contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

III. BUSINESS ASSOCIATES OBLIGATIONS FOR NOTIFICATION, RISK ASSESSMENT, AND MITIGATION

During the term of this Agreement and Related Agreement, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- A. Business Associate agrees to report to the Department Contract Manager any use or disclosure of PHI not provided for by this Agreement, the Related Agreement and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.

- B. Business Associate shall provide the Department with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- C. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of "Breach", ¶ 2)on at least the following

factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.

- D. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after Business Associate reported the Breach to the Department.

Mitigation

- E. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- F. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

- G. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

IV. OBLIGATIONS OF THE DEPARTMENT TO INFORM BUSINESS ASSOCIATES OF PRIVACY PRACTICES AND RESTRICTIONS

- A. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- B. The Department shall notify Business Associate of any changes in, or revocation of permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- C. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- D. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department or the NMDOH.

V. TERM AND TERMINATION

- A. Term. This Agreement shall be effective concurrently with the effective date of the Related Agreement between Business Associate and the Department. This Agreement shall also terminate concurrently with the Related Agreement, except that obligations of Business Associate under this Agreement related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- B. Disposition of PHI upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.

- C. If Business Associate breaches any material term of this Agreement, the Department may either:
1. Provide an opportunity for Business Associate to cure the Breach and the Department may terminate this Contract without liability or penalty in accordance with Termination Article of the Related Agreement if Business Associate does not cure the breach within the time specified by the Department; or,
 2. Immediately terminate this Contract without liability or penalty if the Department determines that cure is not reasonably possible; or
 3. If neither termination nor cures are feasible, the Department shall report the breach to the Secretary. The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this Contract, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

VI. PENALTIES AND TRAINING

Business Associate understands and acknowledges that violations of this Agreement may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

VII. MISCELLANEOUS

- A. Interpretation. Any ambiguity in this Agreement, or any inconsistency between the provisions of this Agreement and the Related Agreement, shall be resolved to permit the Department to comply with the HIPAA Standards.
- B. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- C. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such

actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the Agreement pursuant to its termination provisions.

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

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

- F. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

IN WITNESS THEREOF, the parties hereto separately acknowledge this Business Associate Agreement in addition to their execution of the Related Agreement.

GENERAL SERVICES DEPARTMENT,
RISK MANAGEMENT DIVISION

BUSINESS ASSOCIATE

By: _____
RMD General Counsel

By: _____
Printed Name: _____

Title: _____

Date: _____

Date: _____

APPENDIX H

New Mexico Health Coverage Form

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to:
 - (a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenwnewmexico.state.nm.us/>.
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

Signature of Offeror: _____ Date:

APPENDIX I

STATEMENT OF CONCURRENCE

Offeror hereby concurs to a flat hourly rate in the amount of \$80.00.

Rate is per hour for work performed and travel time, PLUS ALLOWABLE MILEAGE and, in the sole discretion of the Agency, other expenses, excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the Agency to the Contractor. Mileage shall be reimbursed pursuant to 2.42.2 NMAC (Department of Finance and Administration rules governing mileage reimbursement).

New Mexico gross receipts taxes are excluded from the hourly rate, and shall be shown separately on the invoice.

Signature of Offeror

Date

Attachment 1

Scope of Work/Performance Measures

Goals

In accordance with the General Services Department Strategic Plan, which mandates Risk Management Division to protect and conserve the State of New Mexico's human and physical resources and financial assets by providing multi-lines insurance coverages and legal defense, and in support of the Risk Management Division's core services of providing state insurance, defense of public employees in covered law suits, and providing loss control training and claim prevention services, Contractor agrees to provide investigative services as set forth in Section I, Paragraph B of the Request for Proposal

Objectives

The purpose of the criteria contained in the "Activities" section, below, is to evaluate the Contractor to determine whether the Contractor is providing the best investigative services ("protecting" financial assets) at a reasonable cost ("conserving" financial assets).

Activities

An evaluation of the Contractor's services that have been delivered under this Agreement will be undertaken by the Manager of the RMD Property and Casualty Bureau from time to time in the discretion of RMD. The Contractor's evaluation will be based on the quality of performance undertaken in one or more closed case(s) that are chosen in the discretion of the Manager of the RMD Property and Casualty Bureau. The following factors will be evaluated as to quality and timeliness:

1. Acknowledgment of assignments shall be confirmed within 3 business days of Assignment.
2. Reports will be timely transmitted electronically in the format directed by the Agency's internal file handler and contain quality information, i.e. coverage, site visits, photos, document collection, interview statements, liability assessments, reserve recommendations and next report due date.

3. Adjusters shall identify potentially sources of defense and indemnity protection and issue timely tenders to the responsible party and that party's insurer, with copy to the Agency's internal file handler.
4. Adjusters shall initiate subrogation attempts with appropriate follow-up. Upon immediate determination of subrogation interests. This includes putting the adverse carrier on notice.
5. In appropriate circumstances, Adjusters shall recommend to the Agency's internal file handler that a claim be denied. At the direction of the Agency's internal file handler, the Adjuster shall issue notice of denial to the insured or third party claimant with copy to the Agency's internal file handler and, insured agency contact.
6. Adjuster(s) must agree to execute the HIPAA Business Associates Agreement included in Appendix B.
7. Professionalism must be displayed during course of adjusting with the States' insured entities.

Attachment 2

Billing Guidelines

I. General Principles

A. Origination of Work

All work performed under the contract must originate with RMD. In the event any public entity or public employee makes direct contact with the Contractor to initiate inspection or investigative work, the Contractor shall immediately contact RMD for instructions. Such direct contact is discouraged, and such public entity or public employee must be directed to contact RMD to request a claim assignment according to normal RMD claim procedures.

B. Conflicts of Interest

Since the State of New Mexico has a broad array of interests, it is required that Contractors be vigilant in application of the Rules of Professional Responsibility and have processes in place to identify direct or indirect conflicts of interest posed by your representation of the State, its entities and employees.

Contractors must comply with the following directives:

A conflict of interest check must be performed by the Contractor on each claim assigned to it. RMD requires a prompt investigation and resolution of all potential conflicts, including any issue conflicts that could compromise the State's position. **A written email acknowledging the assignment confirming that a conflict of interest check has been performed must be sent to RMD for every claim assigned to the Contractor.**

Conflicts of interest must be disclosed to RMD immediately upon discovery of the conflict, and waived, in writing, if possible, prior to beginning work on the investigation or inspection.

The Contractor is further required to disclose any changes to the conflict of interest status during the course of adjustment/investigation and must inform RMD of any activity which might be viewed as, or trigger, a conflict of interest.

C. Ethical Improprieties

Contractors shall immediately advise the RMD Director of any concerns about ethical improprieties on the part of RMD personnel, or other state employees and self-report any potential ethical improprieties involving Contractor's personnel.

II. Communication

- A. With rare exceptions, RMD requires e-mail communication due to its quick, efficient and paperless nature. All e-mailed correspondence sent to RMD must display the RMD claim number in the subject line.
- B. Claim assignments from RMD will appoint an RMD file handler as the Contractor's primary RMD contact for the claim. RMD may also designate additional RMD personnel to whom Contractor should communicate (or copy on communications). The file handler designated by RMD shall have the ultimate responsibility for the assigned claim and will be the person with whom contractor will have their primary working relationship in terms of inspection, investigative work, claim oversight, approval of costs/expenses, settlement/denial authority requests, and other day-to-day administrative functions.

III. Media Relations and Promotion

- A. Any media inquiry relating to an assigned claim or RMD's relationship with the Contractor must be referred immediately to RMD. The Contractor shall not make statements to the media regarding RMD matters without securing advance approval from RMD through the General Services Department's Public Information Officer. If time is of the essence and neither the RMD contact nor the General Services Department's Public Information Officer can be reached, contact in the following order, the RMD Director, the RMD PAC Bureau Chief, or the GSD Cabinet Secretary to discuss the matter prior to making any statement to the media.
- B. RMD does not authorize the Contractor to advertise or promote its relationship with RMD or the State of New Mexico, other than listing RMD as a client.

IV. Billing Requirements

A. **Hourly Billing Rates – General Requirements**

1. Monthly Due Date, 90-Day Limit, and End of Fiscal Year Billing

- A. The contractor shall submit invoices to RMD for services rendered and expenses incurred on a monthly basis using prescribed submission mechanism.
- B. Bills must be submitted on or before the 10th day of the month following the month that services were rendered or expenses were incurred.
- C. Should the 10th day of the month fall on a weekend or on a holiday recognized by the State of New Mexico, bills may be submitted on the next consecutive business day.
- D. RMD reserves the right to refuse payment of bills or invoices submitted more than 90 days after the date that services were rendered or the date that expenses were incurred.
- E. Invoices for services rendered or expenses incurred during the last month of a Fiscal

Year as defined by the State of New Mexico are subject to DFA closing procedures. Contractors must follow all DFA and RMD guidance when submitting expenses subject to the DFA closing procedure.

- F. In compliance with the terms set forth in Exhibit B, Contractor must submit a detailed statement accounting for all services performed and expenses incurred.
 - 1. If RMD 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 exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action.
 - 2. Upon certification by RMD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance.
 - 3. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.
 - 4. The agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

2. One-Tenth Hour Increments

- A. Time records shall represent the actual time required to perform the task or activity listed. Records shall be kept in time increments of 0.10 (one-tenth) of an hour.

3. Overhead and Administrative Costs

- A. Hourly billing rates include all items of overhead. Overhead includes all administrative or general costs incidental to the operation of the adjusting/investigative contractor.
- B. Overhead expenses are not separately reimbursable. Overhead includes but is not limited to the following administrative tasks
 - 1. Time spent on electronic filing of scope, routine copying, faxing, filing or retrieving from files, organization of correspondence or other documents you prepare or receive.
 - 2. Time spent on initial review, listing or copying of incoming mail and e-mail to determine appropriate routing, filing, etc.
 - 3. Time spent on scheduling appointments, inspections or meetings, including travel arrangements.
 - 4. Preparation and review of monthly billing statements.
 - 5. More than two hours responding to RMD-ordered auditor inquiries on any individual claim.
 - 6. Time associated with compliance to these practices and procedures or to any legal audit, either internal or external, of bills and expenses.
 - 7. Maintenance of a calendar or tickler system.

8. The review of third party billing statements.
9. Time associated with investigating conflicts.
10. Clerical time related to reviewing, set up, opening, closing, or maintaining files.
11. Other similar tasks.

B. Billing Limitations

1. Nine Hour Per Day Maximum

- A. Unless previously approved by RMD, no individual is authorized to bill more than nine (9) hours per day on claims assigned by RMD.
- B. This restriction does not apply when emergency situations, or travel time necessitate additional time.

2. In-House Conferences

- A. Unless attended in person or telephonically by the RMD file handler, RMD will not pay for intra-office conferences.

C. Billing Format

1. Invoices

- A. Contractors must use the electronic format provided by RMD for all invoices. RMD will reject bills that use an unacceptable invoice template.
- B. The following circumstances may result in delayed payment or cause RMD to deny payment on an invoice:

1. Failure to include the correct RMD claim number, dates of service, or task detail on an invoice;
2. Failure to submit invoices in a timely manner;
3. Failure to submit status reports as requested by RMD; or
4. Failure to act in accordance with RMD directives.

2. Description of Services Rendered and Expenses Incurred

- A. All bills must include a chronological listing of services showing at least, the date of services, a description of tasks, and the authorized person who completed the task. Final invoice shall be noted as such.

D. Reimbursable Expenses

1. Reimbursement for allowable expenses shall be invoiced with copies of itemized receipts for all expenses. Failure to submit proper documentation may result in a

reduction in payment due to unsubstantiated expenses.

2. Travel Expenses and Mileage

- A. With prior authorization from the assigned File Handler, personnel traveling on RMD business may submit reimbursement for reasonable travel expenses.
- B. RMD has sole discretion to determine if travel expenses are reasonable.
- C. Unreasonable or excessive travel costs will not be paid.
- D. Allowed mileage may be billed at IRS Standard Mileage Rate.

E. Non-Reimbursable Expenses

1. General Non-Reimbursable Expenses

- A. Items of expense considered overhead are part of the professional's hourly or alternative rate, and are not reimbursable.
- B. Such expenses include, but are not limited to office rent, conference rooms, equipment rental, computer software, computerized research (including, but not limited to, computer legal research and investigation database access time, downloading or copying fees), printing and photocopying for internal office use, office supplies, word processing and secretarial time and overtime, utilities, telephone, facsimile transmissions, facsimile receipt, books, in-town meals, routine postage, overnight messenger service fees, and overtime meals.
- C. RMD reserves the right to reject statements, billings, and/or invoices for non- reimbursable expenses.