

**STATE OF NEW MEXICO**  
**PUBLIC EDUCATION DEPARTMENT**



**REQUEST FOR PROPOSALS**  
**RFP# 40-924-0000017190**

**Kindergarten Entry Assessment**

**Issue Date: October 11, 2013**

<b>Title or Description</b>	<b>Page</b>
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**PART I. – INTRODUCTION**

A.	Purpose of this Request for Proposals.....	4
B.	Summary Scope of Work .....	4
C.	Scope of Procurement.....	4
D.	Procurement Manager.....	4
E.	Definition of Terminology .....	5
F.	Procurement Library.....	9
G.	Distribution List Response .....	9
H.	Background Information .....	9
I.	Eligible Applicants .....	10
J.	Discussions with Offerors.....	10
K.	Contract Period .....	10

**PART II. – CONDITIONS GOVERNING THE PROCUREMENT**

A.	Sequence of Events.....	11
B.	Explanation of Events.....	11
1.	Issuance of RFP.....	11
2.	Pre-Proposal Conference .....	12
3.	Distribution List Response.....	12
4.	Questions Regarding RFP.....	12
5.	Response to Written Questions/RFP Amendments .....	12
6.	Proposal Due Date and Submission.....	12
7.	Proposal Evaluation .....	13
8.	Selection of Finalists.....	13
9.	Best and Final Offers from Finalists.....	13
10.	Oral Presentation and/or Product Demonstration by Finalists.....	14
11.	Finalize Contract.....	14
12.	Contract Award/Effective Date .....	14
13.	Protest Deadline .....	14

**PART III. – GENERAL REQUIREMENTS**

A.	Acceptance of Conditions Governing the Procurement.....	15
B.	Incurring Cost .....	15
C.	Prime Contractor Responsibility.....	15
D.	Subcontractors.....	15
E.	Amended Proposals .....	15
F.	Offeror’s Right to Withdraw Proposal.....	15
G.	Proposal Offer Firm .....	16
H.	Disclosure of Proposal Contents.....	16
I.	No Obligation.....	16
J.	Termination.....	16
K.	Sufficient Appropriation .....	17
L.	Legal Review .....	17
M.	Governing Law .....	17

N.	Basis for Proposal .....	17
O.	Contract Terms and Conditions .....	17
P.	Offeror’s Terms and Conditions .....	17
Q.	Contract Deviations .....	18
R.	Offeror Qualifications .....	18
S.	Right to Waive Minor Irregularities .....	18
T.	Change in Contractor Representatives .....	18
U.	Notice .....	18
V.	Agency Rights .....	18
W.	Right to Publish .....	18
X.	Ownership of Proposals .....	18
Y.	Confidentiality .....	19
Z.	Electronic Mail Address Required .....	19
AA.	Use of Electronic Versions of this RFP .....	19
BB.	New Mexico Employees Health Coverage .....	10
CC.	Campaign Contribution Disclosure Form .....	20

**PART IV. - SPECIFICATIONS**

A.	Major Elements .....	21
B.	Additional Proposal Content Requirements .....	22

**PART V. – RESPONSE FORMAT AND ORGANIZATION**

A.	Number of Responses .....	23
B.	Number of Copies .....	23
C.	Proposal Format .....	23
D.	Forms .....	24

**PART VI. – EVALUATION..... 24**

**APPENDICES ..... 27- 40**

A.	Request for Proposals
B.	Table of Contents
C.	Cost Proposal for Kindergarten Entry Assessment Validation
D.	Campaign Contribution Disclosure Form
E.	Sample Contract

## **PART I. - INTRODUCTION**

### **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of this Request for Proposal (RFP) is to enter into a contract with a qualified vendor to work in conjunction with the New Mexico Public Education Department (PED) to validate the current New Mexico PreK Observational Assessment for use as the New Mexico Kindergarten Entry Assessment. It is anticipated that this RFP will result in a contract award to a single contractor. This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

### **B. SUMMARY SCOPE OF WORK**

This is an RFP covering the validation of the current New Mexico PreK Observational Assessment for use as the New Mexico Kindergarten Entry Assessment. The goal of this RFP process is to help the state develop a formative, valid and reliable, Kindergarten Entry Assessment tool. The Kindergarten Entry Assessment will assess all the essential domains of a child's school readiness. Those domains are:

1. Language and literacy development
2. Cognition and general knowledge
3. Approaches towards learning
4. Physical well-being and development
5. Social and Emotional development

While all domains will be evaluated, there will be emphasis placed on the domains of language and literacy development and cognition and general knowledge. The emphasis placed on early literacy and mathematics is consistent and aligned with the Public Education Department's (PED) *Ready for Success* initiative. The *Ready for Success* initiative was developed under the premise that early intervention for the youngest learners in elementary school is critical to life-long success.

The major elements within the scope of work include the following:

1. This validation will:
  - establish the validity and reliability of the New Mexico PreK Observational Assessment, including the reliability of teacher's observations and the validity of the assessment protocol;
  - determine inter-rater reliability of assessors;
  - determine which rubrics of the PreK Observational Assessment accurately and reliably measure the five domains of school readiness; and

- determine whether the NM PreK Observational Assessment is developmentally, linguistically, and culturally appropriate for New Mexico’s four-year-old to- kindergarten age children including those with disabilities, English Language Learners (ELL) and Dual Language Learners (DLL).
2. The contractor will publish at the end of the year a “Status of New Mexico Children’s Kindergarten Entry and Contributing Factors.”
3. This validation of the New Mexico PreK Observational Assessment will result in a valid and reliable New Mexico Kindergarten Entry Assessment that meets the following elements:
- addresses all five essential domains of a child’s school readiness;
  - can appropriately be administered within the first 30 days of the kindergarten school year;
  - aligns with the National Research Council’s recommendations on early childhood assessment;
  - allows for electronic data entry during assessment compatible with PED’s web-based collection of child data;
  - has capacity for secure, web-based collection of data (child, site, program/center, district, state level) with online access for State officials to monitor and manage in compliance with state-level policies and regulations;
  - provides child-level and classroom-level data to classroom teachers to inform individualized instruction and classroom practice in kindergarten and the early grades, as well as support services and interventions that may be required;
  - provides aggregate data for state and local policy-makers to assess the outcomes of the early childhood system, provide actionable information to drive future policy related to closing the readiness gap, and make resource allocation decisions (e.g., decisions regarding professional development, data systems, funding allocations, etc.);
  - is supported through training and technical assistance for administration that ensures inter-rater reliability for test administrators, data entry and use of data in order inform or guide instruction, interactions/activities and routines and to inform parents of child progress toward Kindergarten readiness; and
  - has capacity for secure, PED-compatible web-based collection of data (child, site, program/center, district, state level) with online access for state officials to monitor and manage in compliance with state-level policies and regulations.

4. In addition, PED will work with the contractor to:

- determine if the Kindergarten Entry Assessment can be used to support progress monitoring activities;
- develop a training plan, with that include training, associated materials and support in administration of the tool to a large population of early childhood professionals; training should include, but not be limited to data entry and validity of results, use of assessment results to enable teachers to promote children's progress towards kindergarten readiness and guidance on how to use results to inform instruction, provide information about program trends as well as guidance on how to share this information with families; and
- partner with districts/schools that are representative of the student population to administer the assessment tool beginning in the 2014-15 school year.

### **C. SCOPE OF PROCUREMENT**

The scope of work in the procurement shall encompass all services specified in the **Summary Scope of Work and Specifications** and requires contractor to submit to PED a comprehensive final report, including narratives and supporting documentation of all required components described as well as recommendations for possible follow-up activities. The contract resulting from this RFP will be for a period of two years ending at the end of the State of New Mexico's fiscal year which is June 30, 2015. Subsequent phases of the project are subject to Legislative approval, and the competitive sealed proposals RFP process.

### **D. PROCUREMENT MANAGER**

It is the intent of PED that the RFP process be open and fair and that the funds be allocated in a manner that provides the greatest possible benefit to New Mexico's residents. The agency has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below:

*Brenda Kofahl, PreK Program Specialist and Data Coordinator  
NM Public Education Department/Early Childhood Literacy Bureau  
Jerry Apodaca Education Building, Room G3  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Phone: 505-827-6627  
E-mail: [brenda.kofahl@state.nm.us](mailto:brenda.kofahl@state.nm.us)*

All deliveries via express carrier should be addressed as follows:

*Brenda Kofahl, PreK Program Specialist and Data Coordinator  
NM Public Education Department/Early Childhood Literacy Bureau  
Jerry Apodaca Education Building, Room G3  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Phone: 505-827-6627*

Any inquiries or request regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact **ONLY** the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Agency. Questions must be in writing and received by **October 31, 2013**. **Written responses will be provided to all applicants who have returned a letter of interest.**

#### **E. DEFINITION OF TERMINOLOGY**

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

“**Agency**” means the New Mexico Public Education Department, Assessment and Accountability Division.

“**Assessment Form**” means one of several alternate and comparable presentations of a single set of operational assessment items in a test booklet.

“**Assessment Version**” means a set of core operational assessment items encompassing all content areas.

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

“**Common Core Standards (CCSS)**” mean English language arts (ELA) and mathematics standards detailing what students must *understand* and be able to do in their kindergarten through high school careers. New Mexico joins 45 other states and the District of Columbia in adopting the Common Core Standards.

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

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

“**Contractor**” means an employer contracting with the State of New Mexico, which employer has, had, or anticipates having six (6) or more employees who worked, are working, or are expected to work an average of at least twenty hours per week over a six-

month period, with said six month period being at any time during the year prior to seeking the contract(s) with the State, or any time during the term of the contract(s) with the State.

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

“**Department of Information Technology**” means the New Mexico Department of Information Technology which is responsible for operating the data center and all communications related items.

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

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

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

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

“**Employer**” means any for-profit or not-for-profit business, regardless of location, that employs one or more persons that qualify as a “New Mexico Employee”. (See below.) Such definition does not include governmental entities.

“**Evaluation Committee**” means a body appointed by the Agency management to perform the evaluation of offeror proposals.

“**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee for submission for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

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

“**Formative Assessment**” is defined as a formal assessment instrument used by teachers during the learning process in order to adjust teaching and learning activities to improve student achievement. It provides quantitative feedback that focuses on the extent of student mastery of academic content. It is typically contrasted with a summative assessment, which measures educational outcomes, often for making accountability determinations.

**“Mandatory”** The terms “must,” “shall,” “will,” “is required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the offeror’s proposal.

**“Milestone”** means a significant event in a project, usually the completion of a major deliverable.

**“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.

**“Priority Standard”** means a content standard or composite of content standards that is preeminent for the purpose of assessment.

**“Procurement Manager”** means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

**“Progress Monitoring Assessments”** mean assessments conducted between screenings on students who are receiving targeted and intensive interventions to determine whether the student is benefitting from interventions.

**“Request for Proposals”** or “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.

**“Responsive Offer or Responsive Proposal”** means an offer or proposal that 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.

**“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.

**“Screening Assessment”** means assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.

**“Solicited and Awarded”** means an ITB or RFP was made available to the general public, through any means, after January 1, 2012 AND the contract(s) sought as a result of that solicitation was/were awarded after January 1, 2012.

**“Solicitations”** means ITBs and RFPs.

**“State (the State)”** means the State of New Mexico.

**“State Educational Institutions”** means New Mexico’s School for the Deaf, School for the Visually impaired, and Juvenile Justice Schools that are State funded, but are neither members of a public school district nor are they public schools.

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

## **F. PROCUREMENT LIBRARY**

The State Purchasing Agent has established an Internet Procurement Library. 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 or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

New Mexico State Purchasing Division includes links to Procurement Regulations and Request for Proposal and is available at: <http://www.generalservices.state.nm.us/spd/>

## **G. DISTRIBUTION LIST RESPONSE**

Interested applicants should submit an Acknowledgement of Receipt Form to the Program Manager by **October 22, 2013** in order to be notified of any amendments to this RFP and to receive responses to written questions. If a program submits a Letter of Interest and decides not to go forward with the proposal submission process, the letter is non-binding.

## **H. BACKGROUND INFORMATION**

Kindergarten is often the first time a child enters a formal educational setting. New Mexico is committed to ensuring that all kindergarten students are provided with every opportunity for success in school. New Mexico has approximately 330,000 K-12 students, of which 57% are Hispanic and 11% are Native American. It is of utmost importance that the state support students before they enter kindergarten.

Kindergarten Entry Assessment is increasingly seen as an important strategy for gauging and supporting children’s kindergarten “readiness.” It is important to note that at no time will the Kindergarten Entry Assessment be used to make accountability determinations for students,

teachers, or schools. Assessments that are formative in nature are designed to provide teachers with actionable data that can be used to support student learning. Once a formative assessment has stakes attached, it loses its validity as a tool to truly drive instruction.

The PED will evaluate submittals for this RFP to ensure that the Kindergarten Entry Assessment validation is of high quality and responsive to the needs of New Mexico’s students and teachers.

**I. ELIGIBLE APPLICANTS**

Eligible applicants include public or private organizations with demonstrated expertise in assessment validation. In addition, the offeror must have the ability to develop technical documentation, and the organizational capacity to manage a statewide assessment validation process.

**J. DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION) BY FINALIST**

An oral presentation by an offeror to clarify a proposal will be required. Oral presentations will be held on **January 8, 2014** after the submission of best and final offers from finalists. Oral presentations will be made at the offeror’s expense. The oral presentation must include, but is not limited to a question/answer session regarding any and all aspects of the proposed system.

**K. CONTRACT PERIOD**

The contract resulting from this RFP will be for a period of two years.

**PART II. – CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement. PED reserves the right to alter or update the schedule. PED will make every effort to adhere to the schedule.

**A. SEQUENCE OF EVENTS**

	<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1.	Issue of RFP	PED	October 11, 2013
2.	Pre-Proposal Conference	PED Potential Offerors	October 21, 2013
3.	Distribution List Response	Potential Offerors	October 22, 2013
4.	Deadline To Submit Additional Questions	Potential Offerors	October 29, 2013
5.	Response to Written Questions/RFP Amendments	PED	October 31, 2013
6.	Submission of Proposal	Offerors	November 18, 2013
7.	Proposal Evaluation	Evaluation Committee	November 22, 2013
8.	Selection of Finalists	Evaluation Committee	December 4, 2013

9.	Best and Final Offers from Finalists	Offerors	December 13, 2013
10.	Oral Presentation and/or Product Demonstrations by Finalists	Offerors	January 8, 2014
11.	Finalize Contract	PED Offeror	January 31, 2014
12.	Contract Award	PED	February 14, 2014
13.	Protest Deadline	Offerors	15 days after the contract award (March 1, 2014)

## **B. EXPLANATION OF EVENTS**

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

### **1. Issuance of RFP**

This RFP is being issued by PED on **October 11, 2013**. The RFP may be viewed and downloaded at [www.ped.state.nm.us](http://www.ped.state.nm.us).

### **2. Pre-Proposal Conference**

A pre-proposal conference will be held on **October 21, 2013** at 1:00 p.m. Mountain Daylight Savings Time at the Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, NM 87501. A public log will be kept of the names of potential applicants that attend the pre-proposal conference. Attendance at the pre-proposal conference is **not** a prerequisite for submission of a proposal.

### **3. Distribution List Response**

Potential offerors should hand deliver or return by facsimile or by registered or certified mail the “Acknowledgement of Receipt of Request for Proposals Form” that accompanies this document (See Appendix Form A) to have their organization placed on the procurement distribution list. This form should be signed by an authorized representative of the organization, dated, and returned by close of business **October 22, 2013** at **5:00 PM** Mountain Daylight Savings Time to the procurement manager.

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential offeror’s organization name shall not appear on the distribution list.

### **4. Questions Regarding RFP**

**Questions regarding the RFP must be submitted in writing by to the Procurement Manager.** All applicants who submit an Acknowledgement of Receipt Form will receive a written response to questions.

5. **Response to Written Questions/RFP Amendments**

Written responses to written questions and any RFP amendments will be distributed on **October 31, 2013** to all potential offerors whose organization name appears on the procurement distribution list.

Additional written requests for clarification of distributed answers and/or amendments must be received by the Procurement Manager no later than seven (7) days after the answers and/or amendments were issued.

6. **Proposal Due Date and Submission**

Unless PED otherwise advises, proposals must be received no later than **November 11, 2013 3:00 PM** Mountain Daylight Savings Time on Proposals received after this deadline **will not** be accepted. Proposals must be addressed and delivered to the Procurement Manager at the address listed below. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **Kindergarten Entry Assessment RFP. Proposals submitted by facsimile or electronically will not be accepted.**

*Brenda Kofahl, PreK Program Specialist and Data Coordinator  
NM Public Education Department/Early Childhood Literacy Bureau  
Jerry Apodaca Education Building, Room G3  
300 Don Gaspar Avenue  
Santa Fe, NM 87501*

**All deliveries via express carrier should be addressed as follows:**

*Brenda Kofahl, PreK Program Specialist and Data Coordinator  
NM Public Education Department/Early Childhood Literacy Bureau  
Jerry Apodaca Education Building, Room G3  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Phone: 505-827-6627*

Receipt of proposals in any PED office other than **Room G3** described above **will not** be considered as meeting the proposal deadline and will be rejected.

**Please call in advance for directions if unfamiliar with delivery location.**

A public log will be kept of the names of all applicant organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Applicants prior to contract award.

7. **Proposal Evaluation**

The evaluation of proposals will be performed by an Evaluation Committee appointed by PED's Management. This process will take place beginning on **November 22, 2013**. During this time, the Program Manager may initiate discussions with applicants who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. **Discussions SHALL NOT be initiated by the applicant.**

8. **Selection of Finalists**

The selection of finalists concludes the proposal evaluation. Selection of finalists will take place by **December 4, 2013**. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations/demonstrations will be determined at this time.

9. **Best and Final Offers from Finalists**

Best and final offers from finalists must be submitted by **December 13, 2013**.

10. **Oral Presentation and/or Product Demonstrations by Finalists**

Finalist oral presentations and/or product demonstrations will take place on **January 8, 2014**. The Agency reserves the right to extend the time at its sole discretion. All oral presentations will be held in Santa Fe, New Mexico. Finalist offerors will be limited to duration time to be determined.

11. **Finalize Contract**

Contract negotiations will be conducted and contracts developed and signed with the most advantageous applicant by approximately **January 31, 2014**. In the event that mutually agreeable terms cannot be reached within the time specified, PED reserves the right to undertake contract negotiations with the next most advantageous applicant without undertaking a new procurement process.

12. **Contract Award/Effective Date**

The planned contract effective date is **February 14, 2014**. This date is subject to change at the discretion of the Public Education Department. All contracts are subject to the approval of the New Mexico Department of Finance and Administration before becoming effective.

After review of the Evaluation Committee Report, the recommendation of the PED management, and the signed contract, the State Purchasing Agent will award the contract in accordance with Part II, A. *Sequence of Events*. This date is subject to change at the discretion of the State Purchasing Agent.

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

**13. Protest Deadline**

Any protest by an applicant must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The 15 day protest period for responsive Applicants shall begin on the day following the receipt of contract award letter and will end as of close of business 15 days thereafter. Protests must be written and must include the name and address of the protestor and the RFP number. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested from the Secretary of Education. Protests received after the deadline will not be accepted. The protest must be delivered to the Secretary of Education.

Hanna Skandera, Secretary of Education  
New Mexico Public Education Department  
Jerry Apodaca Education Building  
300 Don Gaspar, Room 109  
Santa Fe, New Mexico 87501  
Phone Number: (505) 827-6688

**PART III. – GENERAL REQUIREMENTS**

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

A. Acceptance of Conditions Governing the Procurement

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

B. Incurring Cost

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

C. Prime Contractor Responsibility

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

D. Subcontractors

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

E. 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 PED personnel will not merge, collate, or assemble proposal materials.

F. Offeror's Rights to Withdraw Proposal

- a. Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written withdrawal request signed by the offeror's duly authorized representative addressed to the Procurement Manager.
- b. The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

G. Proposal Offer Firm

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

H. Disclosure of Proposal Contents

- a. The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.
- b. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal. Confidential data are normally restricted to confidential financial information concerning the offeror's organization and data that qualify as a trade secret in accordance with the Uniform Trade Secrets Act [§57-3A-1 to 57-3A-7 NMSA 1978]. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.
- c. If a request is received for disclosure of data for which an offeror has made a written request for confidentiality, the State Purchasing Agent shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be

open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

I. No Obligation

The procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered until a valid written contract is awarded and approved by appropriate authorities (including the DoIT, State Purchasing Division, DFA/CRB and Federal authorities).

J. Termination

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

K. Sufficient Appropriation

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

L. Legal Review

The PED requires that all offerors agree to be bound by the General Requirements contained in this RFP. Any offeror concerns must be promptly brought to the attention of the Procurement Manager.

M. Governing Law

This procurement and any agreement with offerors that may result shall be governed by the laws of the State of New Mexico.

N. Basis for Proposal

Only information supplied by the PED in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of offeror proposals. Current and updated information regarding this procurement is available on the PED website at <http://ped.state.nm.us/>.

O. Contract Terms and Conditions

- a. The contract between the PED and a contractor will follow the format specified by the PED and contain the terms and conditions set forth in Appendix Form B, "Agreement Terms and Conditions." However, the PED reserves the right to negotiate with a successful offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful offeror's proposal will be incorporated into and become part of the contract.

- b. Should an offeror object to any of the PED's terms and conditions, as contained in this Section or in Appendix Form F, that offeror must propose specific alternative language. The PED may or may not accept the alternative language. General references to the offeror's terms and conditions or attempts at complete substitutions are not acceptable to the PED and will result in disqualification of the offeror's proposal.
  - c. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.
- P. Offeror's Terms and Conditions  
Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the PED.
- Q. Contract Deviations  
Any additional terms and conditions that may be the subject of negotiation will be discussed only between the PED and the selected offeror and shall not be deemed an opportunity to amend the offeror's proposal.
- R. Offeror Qualifications  
The Evaluation Committee may make such investigations as necessary to determine the ability of the offeror to adhere to the requirements specified within this RFP. The Evaluation committee will reject the proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as defined in §13-1-83 and §13-1-85 NMSA 1978.
- S. 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 fail to meet the same mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.
- T. Change in Contractor Representatives  
The PED reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the PED, meeting its needs adequately.
- U. Notice  
The Procurement Code, §13-1-28 through §13-1-199 NMSA, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

V. Agency Rights

The PED reserves the right to accept all or a portion of an offeror's proposal including the right to purchase software or services from SPA approved price agreements.

W. Right to Publish

Throughout the duration of this procurement process and contract term, potential offerors, offerors, and contractors must secure from the PED written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the offeror's proposal or termination of the contract.

X. Ownership of Proposals

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

Y. Confidentiality

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

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

Z. 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/RFP Amendments).

AA. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the SPA, the version maintained by the SPA shall govern. Please refer to: <http://www.generalservices.state.nm.us/spd>

BB. New Mexico Employees Health Coverage

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, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

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

(c) 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.

CC. Campaign Contribution Disclosure Form.

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (**Appendix E**) as a part of their proposal. This requirement applies regardless whether a covered contribution was made or not for the positions of Governor and Lieutenant Governor. Failure to complete and return the form will result in disqualification.

## **PART IV. – SPECIFICATIONS**

### **A. Major Elements**

1. The external validator will:

a. determine which of the New Mexico PreK Observational Assessment rubrics measure the five domains of school readiness including the following domains:

1. Language and literacy development
  2. Cognition and general knowledge
  3. Approaches towards learning
  4. Physical well-being and development
  5. Social and emotional development
- b. determine the reliability of kindergarten teachers' observations and validate the Kindergarten Entry Assessment protocol;
  - c. determine the validity and reliability of the New Mexico PreK Observational Assessment for use as a Kindergarten Entry Assessment;
  - d. determine inter-rater reliability;
  - e. establish concurrent and construct validity of the New Mexico PreK Observational Assessment as a Kindergarten Entry Assessment;
  - f. determine if the Kindergarten Entry Assessment can be used to support progress monitoring activities;
  - g. develop a plan to work with PED to partner with schools that are representative of the kindergarten student population to pilot the assessment tool including schools that offer the New Mexico PreK program; and
  - h. publish a "Status of New Mexico Children's Kindergarten Entry and Contributing Factors."
2. The offeror will propose a plan for managing the program, including:
    - a. a list of proposed personnel for all aspects of the contract with their qualifications and résumés;
    - b. effective communication including program management phone conferences accessible by a toll-free dial-in number, effective ongoing and continual communication via e-mails and phone conversations with both participating schools and the PED and monthly reports of contract activity and events;
    - c. facilitation of a contract kick-off meeting at the beginning of the contract. The contractor will be responsible for all costs related to this event;
    - d. detailed invoices submitted monthly with required supporting documentation for actual work completed according to a billing schedule that is to be submitted to the PED within 60 days of the contract's signing. Detailed invoices shall be submitted monthly for services rendered coinciding with the PED's fiscal year which ends June 30, reflecting the budget presented in the proposal and finalized at contract signing. Invoices for payment must reflect work completed rather than invoicing based on set time intervals or proportionalized invoicing of the yearly budget. Offerors must include a sample detailed invoice, and any typical supporting documentation, as part of their proposals. All invoices and associated materials must be completed following a consistent and approved format; and
    - e. detailed and user-friendly timetables, including project schedules, for all required activities and deliverables of the contract. Schedules will be reviewed and approved by the PED. All changes on the timelines or project schedules must be communicated to and approved by the appropriate assessment personnel at the PED.

## **B. Additional Proposal Content Requirements**

### **1. Demonstration of Expertise in Assessment Validation**

The offeror must have demonstrated expertise in assessment validation and have a record of accomplishment in the ability to provide data collection and reporting. Offerors must provide no fewer than three recent letters of reference and specific examples of previous district and/or statewide test validation work. The offeror must demonstrate a history of meeting deadlines and satisfying contract requirements. The offeror must submit resumes of all staff who will be involved in the project.

### **2. Cost Proposal**

In preparing the proposed budget for the project, the offeror must provide a statement of total costs and annual budgets.

Note: Cost will be evaluated independently from the technical proposal. Cost Proposals must be submitted as a separate file.

Per Diem will be reimbursed in accordance with the New Mexico Per Diem & Mileage Act.

### **3. Security**

The vendor will take measures and will require its subcontractors to prudently safeguard, protect, and maintain confidentiality of any student level data of any kind which come into its possession in the performance of services under this contract; not to disclose any such data without prior authorization nor in a manner inconsistent with applicable federal law; and to return or destroy at the PED's option any such data on the earlier of expiration or termination of this contract. Proposal should explain processes to meet these requirements.

### **4. Item Bias Study**

The PED requires a study of item bias (Differential Item Functioning) by content area and grade level for the following subgroups at a minimum: Males, Females, Caucasian, Hispanic, American Indian, African American, Asian, English Learners, and Students with Disabilities. The study must provide a plan for review of flagged items and it must describe a protocol for modifying or replacing them.

### **5. Allowable Accommodations**

The PED requires preparation of a list of allowable assessment accommodations that do not invalidate test scores and alternate assessments provided by the Offeror for students with disabilities and English Language Learners. The list of allowable accommodations and alternate assessments will be published with information about the formative assessment selected through the RFP process.

## **PART V. – RESPONSE FORMAT AND ORGANIZATION**

### **A. NUMBER OF RESPONSES**

Offerors shall submit only one proposal. If applicants are proposing to serve more than one targeted community, each targeted community must be addressed in the proposal narrative.

## **B. NUMBER OF COPIES**

Applicants shall deliver four (4) copies of their proposal to the location specified in Part II, Paragraph B.6 on or before the closing date and time for receipt of proposals. **One of the four copies must have the original signatures of the authorized officials of the agency on the cover page.** Only proposals with the original signatures will be accepted as meeting the established deadline.

## **C. PROPOSAL FORMAT**

All proposals must be printed, double-spaced and one sided on 8 ½” x 11” (larger paper is permissible for charts, spreadsheets, etc.), unruled, white paper. The font must be set at 12-point size, in a readable font such as New Times Roman, Courier, Arial, etc. All pages shall be numbered and proposals must be placed within binders with tabs delineating each section.

### **Proposal Organization**

The proposal must be organized and indexed as listed in the table of contents, which references the responses to the required information.

Within each section of their proposal, Applicants shall 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.**

PED is not responsible for any costs incurred in the preparation or submission of a proposal.

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

## **D. FORMS**

This section will serve as a checklist of the forms that must be included as part of the proposal.

**All forms provided that are required to be included in the proposal are listed below.**

**Appendix A – Acknowledgement of Receipt Form**

**Appendix B – Table of Contents**

**Appendix C** – Cost Proposal for Kindergarten Entry Assessment Validation for two years

**Appendix D** – Campaign Contribution Disclosure Form

**Appendix E** – New Mexico PreK Observational Assessment Rubric

**Appendix F** – Sample Contract

## **PART VI. – EVALUATION**

### **A. Evaluation Point Summary**

The Evaluation Committee will evaluate qualifying proposals against the criteria in Section B. Each area of the evaluation criteria must be addressed in detail.

Vendor performance on prior and existing contracts with the PED is subject to review and discussion and may be utilized in the decision making processes inherent in RFP response review.

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

1. Demonstrated Ability to Complete Entire Scope of Work: 500 possible points
  2. Training and Technical Support: 125 possible points
  3. Program Management: 100 possible points
  4. Cost: 300 possible points (Appendix C must be completed)
- Total:** 1,000 points

**B. Evaluation Factors**

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

**PROPOSAL EVALUATION RUBRIC**

**Evaluation Score Sheet  
Kindergarten Entry Assessment**

**Vendor Name:** \_\_\_\_\_

**Evaluator:** \_\_\_\_\_

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

Score assessed as follows:

0 = Failure

10 = Poor: inadequate, fails to meet requirement

20 = Fair: only partially responsive

30 = Average: meets minimum requirement

40 = Above average: exceeds minimum

50 = Superior

<b>Requirement Category</b>	<b>Score (0-50)</b>	<b>Weight</b>	<b>Poss. Points</b>	<b>Points Awarded</b>
<b>1. Demonstrated Ability to Complete Entire Scope of Work</b>				
Assessment validation protocol		4	200	
Data management plan for pilot study and phased implementation		3	150	
Pilot study management plan		3	150	
<b>3. Training and Technical Support</b>				
Training		1.5	75	
Materials & Documentation		1	50	
<b>5. Program Management</b>				
Personnel		1	25	
Communication		1	25	
Project Reports		1	25	
<b>6. Cost*</b>			300	
<b>Total</b>			1,000	

\* The points assigned to each offeror's cost proposal will be based on the lowest Proposal Price. The offeror with the lowest Proposal Price will receive 100% of the price points. All other offerors will receive a portion of the total cost points based on what percentage higher their Proposal Price is than the Lowest Proposal Price. An offeror whose Proposal Price is more than double (200%) the Lowest Proposal Price will receive no points. The formula to compute the points is: Cost Points x (2 – Proposal Price/Lowest Proposal Price).

### **C. Evaluation Process**

The evaluation process will follow the steps listed below:

1. All offeror proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the offeror for clarification of the response.
3. The Evaluation Committee may use other sources of information to perform the evaluation.
4. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible offerors with the highest scores will be selected as finalist offerors based upon the proposals submitted. Finalist offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from the oral presentations will be added to the previously assigned points to attain final scores. The responsible offeror whose proposal is most advantageous to PED, taking into consideration the evaluation factors in Section V, will be recommended for contract award. 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**  
**REQUEST FOR PROPOSALS**  
**ACKNOWLEDGEMENT OF RECEIPT FORM**  
**RFP # \_\_\_\_\_**

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on 10/16/13. Only potential offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all offeror written questions and the Agency's written responses to those questions as well as RFP amendments if any are issued.

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

**REPRESENTED BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**PHONE NO.:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**FAX NO.:** \_\_\_\_\_

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

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

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

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

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

*Brenda Kofahl, PreK Program Specialist and Data Coordinator  
NM Public Education Department/Early Childhood Literacy Bureau  
Jerry Apodaca Education Building, Room G3  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Phone: 505-827-6627  
[brenda.kofahl@state.nm.us](mailto:brenda.kofahl@state.nm.us)*

**APPENDIX B  
TABLE OF CONTENTS**

Instructions: Complete this Table of Contents in alignment with your proposal. Please insert page numbers to indicate where these sections can be found. All forms should be returned with the proposal.

<b>PROPOSAL CONTENTS</b>	<b>PAGE</b>
Cover Sheet with Name of Firm	
Table of Contents (Appendix B)	
Narrative Addressing Scope of Work Requirements	
Additional Proposal Content Requirements	
Acknowledgement of Receipt (Appendix A)	
Cost Proposal for Kindergarten Entry Assessment (Form C)	
Campaign Contribution Disclosure Form (Form D)	

**APPENDIX C**  
**Cost Proposal for Kindergarten Entry Assessment**  
**State of New Mexico Bid #**

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

Contact Name: \_\_\_\_\_

	Contract Year 1	Contract Year 2
<b>Project Component</b>		
<b>Totals:</b>		

## APPENDIX D 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 F**

STATE OF NEW MEXICO  
NAME OF AGENCY

CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **NAME OF AGENCY**, 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.**

A. The Contractor shall perform the following work:

B. Services will be performed (AT)(WITHIN)(LOCATION)

C. Performance Measures.

Contractor shall substantially perform the following Performance Measures:

1.

2.

The receipt of the deliverables contemplated under this Agreement shall assist the Agency in obtaining its goal(s) as set forth in its Strategic Plan on page(s)\_\_\_\_\_.

(or reference an Attachment 1, see below)

**2. Compensation.**

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

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the 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.

( **OR CHOICE – MULTI-YEAR** – A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

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

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.)

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

### **3. Term.**

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

#### **4. Termination.**

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

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

#### **5. Appropriations.**

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

#### **6. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as

a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service -- Copyright.**

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

**12. Conflict of Interest; Governmental Conduct Act.**

The Contractor warrants that it presently has no interest and 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. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**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 have the option to terminate the

Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

**14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If 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 Section 38-3-1 (G) NMSA 1978. 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, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

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

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.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: [insert name, address and email].

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

**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: \_\_\_\_\_  
Hanna Skandera  
Secretary of Education

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Chief Information 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