

**STATE OF NEW MEXICO
AND
TOURISM DEPARTMENT**

REQUEST FOR PROPOSALS (RFP)

Website Development and Redesign



RFP#

16 418 1005 00700

Release Date:

January 13, 2016

Due Date:

February 5, 2016

I. INTRODUCTION.....	1
A. PURPOSE OF THIS REQUEST FOR PROPOSALS	1
B. BACKGROUND INFORMATION.....	1
• <i>The content and voice should echo potential traveler’s experiences throughout the State.</i>	<i>3</i>
<i>The oldest state magazine in the nation, and a consistent national and regional award-winner, New Mexico Magazine has a total monthly audience reach of more than 460,000, with more than 293,000 print readers and 167,000 users and followers across our digital platforms.</i>	<i>3</i>
C. SCOPE OF PROCUREMENT.....	4
D. PROCUREMENT MANAGER.....	4
E. DEFINITION OF TERMINOLOGY.....	4
II. CONDITIONS GOVERNING THE PROCUREMENT	7
A. SEQUENCE OF EVENTS	7
B. EXPLANATION OF EVENTS	8
1. Issuance of RFP.....	8
2. Acknowledgement of Receipt	8
3. Deadline to Submit Written Questions	8
4. Response to Written Questions	9
5. Submission of Proposal.....	9
6. Proposal Evaluation.....	9
7. Selection of Finalists	9
8. Best and Final Offers.....	10
9. Finalize Contractual Agreements.....	10
10. Contract Awards	10
11. Protest Deadline	10
C. GENERAL REQUIREMENTS.....	11
1. Acceptance of Conditions Governing the Procurement	11
2. Incurring Cost.....	11
3. Prime Contractor Responsibility	11
4. Subcontractors/Consent	11
5. Amended Proposals	11
6. Offeror’s Rights to Withdraw Proposal.....	11
7. Proposal Offer Firm.....	12
8. Disclosure of Proposal Contents	12
9. No Obligation.....	12
10. Termination	13
11. Sufficient Appropriation.....	13
12. Legal Review	13
13. Governing Law.....	13
14. Basis for Proposal	13
15. Contract Terms and Conditions	13
16. Offeror’s Terms and Conditions	14
17. Contract Deviations	14
18. Offeror Qualifications	14
19. Right to Waive Minor Irregularities	14
20. Change in Contractor Representatives	15
21. Notice of Penalties.....	15
22. Agency Rights	15
23. Right to Publish.....	15
24. Ownership of Proposals	15
25. Confidentiality	15
26. Electronic mail address required	16

27.	<i>Use of Electronic Versions of this RFP</i>	16
28.	<i>New Mexico Employees Health Coverage</i>	16
29.	<i>Campaign Contribution Disclosure Form</i>	16
30.	<i>Letter of Transmittal</i>	17
31.	<i>Pay Equity Reporting Requirements</i>	17
32.	<i>Disclosure Regarding Responsibility</i>	18
33.	<i>New Mexico Preferences</i>	20
III.	RESPONSE FORMAT AND ORGANIZATION	20
A.	NUMBER OF RESPONSES	20
B.	PROPOSAL SUBMISSION	20
C.	PROPOSAL FORMAT	21
1.	<i>Proposal Content and Organization</i>	21
IV.	SPECIFICATIONS	22
A.	SCOPE OF WORK	22
B.	TECHNICAL SPECIFICATIONS	23
2.	DESIGN REQUIREMENTS	25
C.	QUALIFICATIONS	26
D.	ORGANIZATIONAL EXPERIENCE	26
	<i>Offerors must:</i>	26
E.	ORGANIZATIONAL REFERENCES	26
F.	BUSINESS SPECIFICATIONS	27
1.	<i>Financial Stability</i>	27
2.	<i>Letter of Transmittal Form</i>	27
3.	<i>Campaign Contribution Disclosure Form</i>	27
4.	<i>Financial Estimate</i>	28
5.	<i>Resident Business or Resident Veterans Preference</i>	28
A.	EVALUATION POINT SUMMARY	28
B.	EVALUATION FACTORS	29
1.	<i>B.1 NMTD Requirements (See Table 1)</i>	29
2.	<i>B.2 Magazine Requirements (See Table 1)</i>	29
3.	<i>B.3 Organizational Experience</i>	29
4.	<i>B.4 Organizational References</i>	29
5.	<i>C.1 Financial Stability (See Table 1)</i>	29
6.	<i>C.3 Letter of Transmittal (See Table 1)</i>	29
7.	<i>C.4 Campaign Contribution Disclosure Form (See Table 1)</i>	29
8.	<i>C.5 Financial Estimate (See Table 1)</i>	29
9.	<i>C.6 New Mexico Preferences</i>	29
C.	EVALUATION PROCESS	30
APPENDIX B		32
CAMPAIGN CONTRIBUTION DISCLOSURE FORM		32
APPENDIX C		36
SAMPLE CONTRACT		36
APPENDIX D		52
FINANCIAL ESTIMATE		52
APPENDIX E		53
LETTER OF TRANSMITTAL FORM		53

APPENDIX F	55
ORGANIZATIONAL REFERENCE QUESTIONNAIRE	55
APPENDIX G.....	59
RESIDENT VETERANS CERTIFICATION	59

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this Request for Proposal (RFP) is to identify the appropriate vendor for creating, designing and developing a new website for the New Mexico Tourism Department (www.newmexico.org) (NMTD) and the Department owned, but independently funded *New Mexico Magazine* (www.nmmagazine.com) (the Magazine), and to establish a Contract through competitive negotiations for the procurement of website development services to promote and grow domestic tourism to the State of New Mexico. The goal is to create visually impactful and informative websites, which are simple for travelers and readers to navigate, interact with, and search.

B. BACKGROUND INFORMATION

Four years ago, the New Mexico Tourism Department (NMTD) developed a branding strategy to revitalize domestic tourism, a lead driver of the state's economy. At that time, visitation was in decline and the State suffered from both low awareness as a vacation destination overall and key misperceptions, namely that New Mexico is a hot, dry desert with very little to do. The New Mexico True brand (Brand) was created to drive awareness and overcome those false perceptions by showcasing what is True: authentic adventures steeped in the rich culture that can only be found in New Mexico.

Since the launch of the Brand in April of 2011, New Mexico has achieved record-breaking visitation levels - driving more visitors, who are spending more dollars than ever before. A Return on Investment study conducted by Longwoods International indicated a 7:1 return for New Mexico True advertising, showing that for every one dollar invested in advertising, seven dollars is returned to the New Mexico tax base.

Newmexico.org is the official travel resource for the State of New Mexico and generates more than 2.5 million user sessions per year. The 2012 website redesign was a ground up design-build project including the selection of Umbraco CMS (.NET) for content management, extensive backend development and content migration to Umbraco. The re-design also included a separate, stand-alone mobile-optimized site. In addition to the desktop website, the Umbraco CMS feeds content to the stand-alone mobile site. The Umbraco CMS allows staff to create, edit, schedule and publish/unpublish content on the websites.

There is also a custom developed platform that allows for businesses and organizations aligned with the tourism industry in New Mexico, upon creating an account, to create listings add events, and promote deals or special offers. The process is moderated by NMTD personnel and integrates directly into the current website.

The current New Mexico True marketing plan reaches six (6) targeted fly markets, regional drive markets, State residents, as well as select national niche audiences. The current media plan employs cable television, cinema, transit/taxi, airport display, billboards, magazine, radio, and

digital advertising as well as social and native content online. Additionally, NMTD sponsors production and distribution of New Mexico True Television, a 30 minute travel show which airs in-state and in select regional markets.

Beyond the NMTD's media plan, the Brand has strong momentum with many communities and destinations around the State, with integration of the Brand into all tourism advertising. For examples of New Mexico True Community Ads, [Click Here](#)

Additionally, numerous private entities and even individuals have adopted the Brand as their own. For example, Ben E. Keith distributors wrapped their semi-trucks with Brand imagery, a Californian proclaims their love for New Mexico with "NM True" personalized license plates, and a proud chef of the breakfast burrito voted #1 on the New Mexico True Breakfast Burrito Byway sports a branded tattoo to showcase his pride. For examples of Brand Adoption from Non-Tourism Partners, [Click Here](#)

For detailed information on the New Mexico tourism industry, current performance, and performance since the launch of New Mexico True, refer to: NMTD 2015 Annual Report: [Click Here](#)

Please visit and become familiar with the Brand:

NMTD Traveler Website: <http://www.newmexico.org/>

NMTD Industry Partner Website: <http://nmtourism.org/>

NMTD Ad Builder /Asset Library: <http://media.nmtourism.org>

NMTD Social Media Accounts:

- Facebook: <https://www.facebook.com/NewMexico>
- Twitter: <https://twitter.com/newmexico>
- Pinterest: <http://www.pinterest.com/VisitNewMexico>
- Instagram: <http://instagram.com/newmexicotrue>
- YouTube: <https://www.youtube.com/VisitNewMexico>

Research and Other Reference Documents:

- Summary Report: 2014 Advertising Effectiveness Study: [Click Here](#)
- Summary Report: Tourism ROI and Halo Effect: [Click Here](#)
- The Economic Impact of Tourism in New Mexico: [Click Here](#)
- Reference on Market Prioritization and Media Planning Principles: [Click Here](#)

It is imperative that the look and feel of this new site reflects our Brand and Brand values of authenticity, discovery, connection, and adventure. Specifications for this web site must include, but are not limited to the following:

Content:

- The content (text) should not be text-heavy and should be much more condensed than the present site;
- The content should present information in a way that not only encourages travel to the State, but also increases the length of stay (i.e. “There is so much to do, I need more time in New Mexico.”); and
- The content and voice should echo potential travelers’ experiences throughout the State.

Look and Feel:

- The imagery should be compelling and be aligned with our Brand and Brand values; imagery should focus on “site-doing” and reflect action;
- The look and feel should position New Mexico as a place for travelers with an adventurous spirit, and a thirst for authenticity because it offers adventures steeped in culture; and
- For additional information on Look/Feel and capturing the beauty and diversity of New Mexico see New Mexico True Ad Builder Guidebook: [Click Here](#).

Note: The Contractor will work with the NMTD’s Agency of Record, Talweg Creative, to ensure that the branding and creative executions are part of the NMTD’s overall identity plan. Colors, logos, artwork, style and fonts should be consistent among all outward communications.

BACKGROUND ON *NEW MEXICO MAGAZINE*

The oldest state magazine in the nation, and a consistent national and regional award-winner, *New Mexico Magazine* has a total monthly audience reach of more than 460,000; with more than 293,000 print readers and 167,000 users and followers across our digital platforms.

The *New Mexico Magazine* website (nmmagazine.com) was launched in 2013, piggy-backing on the NMTD’s new site. With over a third-of-a-million unique sessions a year, and an average time on site of a minute and a half, the website has provided readers of *New Mexico Magazine*, and interested parties from around the world a chance to experience breathtaking photography of, and beautiful storytelling about, all things New Mexico: compelling statewide destinations, events, and festivals, expert recommendations on lodging, dining, and shopping, the artists, artisans, purveyors, and products unique to New Mexico and its heritage, exploration, outdoor adventures, and entertainment, and in-the-know guidance.

As with the NMTD site, the 2013 website redesign was a ground up design-build project including the selection of Umbraco CMS (.NET), extensive backend development and content migration.

Please visit and become familiar with the *New Mexico Magazine* brand:

New Mexico Magazine Website: <http://www.nmmagazine.com/>

New Mexico Magazine Social Media Accounts:

- Facebook: <https://www.facebook.com/NewMexicoMagazine>
- Twitter: <https://twitter.com/NMMagazine>

- Pinterest: <https://www.pinterest.com/nmmagazine/>
- Instagram: <https://instagram.com/newmexicomag/>
- YouTube: <https://www.youtube.com/user/newmexicomagazine>

The Brand experience requirements are aligned with those of the NMTD, but must reflect the Magazine's look and feel, as well as select demographic concerns

C. SCOPE OF PROCUREMENT

NMTD Website and NM Magazine website redesign, creation, and maintenance.

D. PROCUREMENT MANAGER

1. NMTD 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: Billie Neese, Procurement Manager
 Address: New Mexico Tourism Department
 491 Old Santa Fe Trail
 Santa Fe, NM 87501
 Telephone: (505) 827-6733
 Email: Billie.Neese@state.nm.us

2. **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 NMTD. **Protests of the solicitation or Award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this RFP, 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 RFP. 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

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

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this Contract.

“Award” means the final execution of the Contract document.

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

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“Confidential” means confidential financial information concerning the 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 1.4.1.45 NMAC. 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.

“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” means the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“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.

“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.

“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.

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

“Price Agreement” means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“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.

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

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.

“Redacted” means a version/copy of the proposal with the information considered confidential as defined by NMAC 1.4.1.45 and defined herein and outlined in Section II.C.8 of this RFP blacked out BUT NOT omitted or removed.

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

“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.

“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 (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.)

“Unredacted” means a version/copy of the proposal containing all complete information including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

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

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 or by contacting the Procurement Manager and scheduling an appointment. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:

<http://nmtourism.org/rfp/>

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	NMTD	1.13.16
2. Distribution List	NMTD	1.18.16
3. Deadline to submit Questions	Potential Offerors	1.22.16
4. Response to Written Questions	Procurement Manager	1.27.16
5. <i>Submission of Proposal</i>	<i>Potential Offerors</i>	<i>2.5.16</i>
6. Proposal Evaluation	Evaluation Committee	2.12.16
7. Selection of Finalists	Evaluation Committee	2.15.16
8. Best and Final Offers	Finalist Offerors	2.18.16
9. Oral Presentations	NMTD/Offerors	2.26.16
10. Finalize Contractual Agreements	NMTD/Finalist Offerors	2.29.16
11. Contract Awards	NMTD/ Finalist Offerors	3.4.16
12. Protest Deadline	NMTD	3.11.16

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 NMTD on January 13, 2016.

2. Acknowledgement of Receipt

Potential Offerors should hand deliver, return by facsimile or registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" (APPENDIX A) that accompanies this document 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 January 18, 2016.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the "Acknowledgement of Receipt of Request for Proposals Form" will constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name will 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 5:00 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. D. Questions will be clearly labeled and will 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 will be distributed as indicated in the Sequence of Events to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offerors that provide the "Acknowledgement of Receipt of Request for Proposals Form" described in Section II.B.2 before 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/DAYLIGHT TIME ON February 5, 2016. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be submitted to the Procurement Manager via Dropbox as explained in Section III. A.

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 RFP. 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 the schedule in the Sequence of Events or as soon as possible. A schedule for the oral presentation and demonstration will be determined at this time.

8. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule in the Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at Finalist Offeror's oral presentation and demonstration.

9. Finalize Contractual Agreements

Any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule in the Sequence of Events or as soon thereafter as possible. This date is subject to change at the discretion of the NMTD. 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.

10. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, NMTD will Award as per the schedule in the Sequence of Events or as soon as possible thereafter. This date is subject to change at the discretion of NMTD.

The Contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and NMTD, 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 NMTD and State approval.

11. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. The fifteen (15) calendar day protest period will begin on the day following the Award of Contracts, and will end at 5:00 pm Mountain Standard Time/Daylight Time on the fifteenth (15th) day. Protests must be written and include the name and address of the protestor and the RFP number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits, and must specify the ruling requested from the party listed below. The protest must be delivered to:

Isabel B. Lopez
New Mexico Tourism Department
491 Old Santa Fe Trail

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.

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

3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP will 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 will 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 Letter of Transmittal. 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 will 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 **will 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 SPD 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 will 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 NMTD 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 a 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 the 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 Sample Contract. Such exceptions may cause a proposal to be rejected as non-responsive 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 Sample Contract 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 will 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. 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.

24. Ownership of Proposals

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

25. 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 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 Agency's written permission.

26. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Each Offeror must designate one valid e-mail address to receive any correspondence regarding this procurement. (See also Section II.B.5).

27. 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 NMTD, the Offeror acknowledges that the version maintained by NMTD shall govern. Please refer to:

<http://nmtourism.org/rfp/>

28. 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 twenty (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.insurenwnewmexico.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 will 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.

29. 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 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.

30. 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.

31. 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, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

32. 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 (3) 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 RFP if, at any time during the term of the 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 the Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under the Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror non-responsive.
- E. Nothing contained in the foregoing will 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 the 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 the 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.

33. 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 <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

A. New Mexico Business Preference

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," (APPENDIX G).

An Agency shall not Award a business both a New Mexico Business Preference and a New Mexico Resident Veterans 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 proposal in response to this RFP.

B. PROPOSAL SUBMISSION

1. Offerors should deliver a complete electronic proposal to the Procurement Manager's Dropbox account. As an alternative to the Dropbox option, Offerors may submit proposals via a flash drive to the address specified for the Procurement Manager. All submission requirements and due dates will be the same for this format.
2. Offerors must establish a Dropbox account from which to upload their proposals to the Procurement Manager for use as outlined in Section III.C. For information how to establish a Dropbox account, please refer to: <https://www.dropbox.com/en/help/19>.
3. **Response to Technical Specifications** – One (1) electronic upload (Folder 1) must be submitted in the sequence described in Section III. C.1. All information for the technical proposal must be combined into a single pdf file for uploading **but must contain individual sections as specified in Section III.C.1.**
 - a. Proposals containing confidential information **must** be submitted as two separate folders:
 - **Unredacted** version for evaluation purposes.

- Upload the unredacted version in “Unredacted Technical Proposal Folder 1.1”
 - **Redacted** version (confidential information omitted by removing and indicating, in writing, confidential information omitted here) for the public file.
 - Upload the redacted version in “Redacted Technical Proposal Folder 1.3”
 - b. Video and/or audio files of creative examples are welcomed and may be uploaded separately to the same Dropbox folder (Folder 1). Additional files must be referenced or linked within the content of the primary pdf document(s).
4. **Response to Business Specifications** – One (1) electronic upload (Folder 2) must be submitted in the sequence described in Section III. C.1.

For technical support issues contact Max Lehman at:

Phone: (505) 476-0210

Email: max.lehman@state.nm.us

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

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

C. PROPOSAL FORMAT

All proposals must be submitted to the Procurement Manager via Dropbox in pdf format or by choosing the “read only” option. Folder 1 should be titled “Technical Specifications” and Folder 2 should be titled “Business Specifications” and should include corresponding subfolders labeled to include lettering and numbering. For example, Folder 2 will be titled Business Specifications, Subfolder A should be titled A. Letter of Transmittal, Subfolder B should be titled B. Financial Stability, continuing until all subfolders have been titled to include each corresponding letter.

1. Proposal Content and Organization

Offeror may include minimal direct reference to pre-prepared or promotional material only if it is referenced and clearly marked.

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

Technical Proposal (Folder 1):

- A. Signed Letter of Transmittal
- B. Table of Contents
- C. Proposal Summary (Optional)
- D. Response to Contract Terms and Conditions
- E. Offeror's Additional Terms and Conditions
- F. Response to Specifications (**except cost information which shall be included in Cost Proposal/Binder 2 only**)
 - 1. Organizational Experience
 - 2. Organizational References
 - 3. Mandatory Specification
 - 4. Financial Stability - Financial information considered confidential should be placed in the **Confidential Information** binder.
 - 5. Signed Campaign Contribution Form
 - 6. New Mexico Preferences (If applicable)
- G. Other Supporting Material (If applicable)

Cost Proposal (Binder 2):

- 1. Completed Financial Estimate

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder #2 on the cost response form.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview 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. SPECIFICATIONS

A. SCOPE OF WORK

The Contract resulting from this RFP will include, but is not limited to the following general Scope of Work. Offerors do not need to provide a narrative specifically addressing this Scope of Work, but it is provided as reference.

The Contractor shall provide the following to the Agency:

- 1. Collaboration with NMTD and the Magazine on the creation of website art, layout, structure and navigation.
- 2. Development of website features and infrastructure, including front and back-end coding; integration of third party APIs; and testing/quality assurance.
- 3. Management of a project roadmap.
- 4. Migration of content from our current websites to the new platform.
- 5. Assurance that all of existing functionality present on newmexico.org, the NMTD

Partners Portal extranet, and on nmmagazine.com is maintained except where directed by NMTD and the Magazine.

6. Implementation of new features/components including, but not limited to, dynamic and/or prioritized content, content tagging and related content (user experience and/or native advertising), improved rich and multimedia integration and other site features including, but not limited to how to best incorporate rich media, dynamic content, enhanced mapping functionality, email capture, vacation guide orders/downloads (among other guide requests) and social media engagement throughout the website.
7. Retained services including future development, technical support, training, maintenance and reporting.
8. Recommendations for the most appropriate platform to match the Agency needs and perform functionality updates as needed.
9. A content audit.
10. Ability and willingness to collaborate with other development companies that may be contracted with NMTD. For example, booking, platforms, ticket sellers or reservation agents.
11. Ability to (but not a mandatory deliverable) have the websites developed on LAMP server or comparable environment. The current website is built on a MS windows server, but the Agency prefers a LAMP server or comparable environment

The Agency shall provide the following:

1. Hosting and acceleration.
2. A branding/style guide.
3. Analytics staff to decipher reporting.

B. TECHNICAL SPECIFICATIONS

1. Technical Requirements

Offerors must provide a thorough narrative addressing all of the technical requirements for NMTD and the Magazine. The Offeror may suggest a specific product, platform, or tool to be utilized within the websites; the process or plan of implementation; and any other relevant information to the technical requirements as outlined in this RFP. All of the technical requirements are considered **mandatory** and must be addressed by the Offeror.

The Offeror **must** provide all of the following technical requirements for the NMTD and Magazine websites:

- a. W3C standards and Americans with Disabilities (ADA) compliance.
- b. iFrame support.
- c. User management to permit controlled levels of content and workflow options through login and password.
- d. Password protection availability for areas as needed.
- e. One-click social sharing of content.
- f. Tools for tagging assets such as articles, links, images, etc. including on-click, click trackers, tracking pixels, etc.

- g.** Ability to implement all standard HTML elements including, but not limited to p, ul, li, ol, a, table, tr, td, etc. The appropriate styling must be developed for consistency across both websites for all elements.
- h.** An intuitive content management system (CMS).
- i.** Ability to link all website elements, including images and text, and allow for activity tracking.
- j.** Ability to preserve current URLs with the intention of not breaking bookmarks.
- k.** Ability to create and deploy custom widgets.
- l.** Ability to preview on a development server prior to pushing assets live.
- m.** SEO optimization.
- n.** Ability to easily post embed video, images, animated GIFs, audio, and PDFs from all standard platforms.
- o.** A flexible platform solution.
- p.** Ability to support multiple web browsers including the current and last two versions of Chrome, Firefox, Safari, and Microsoft Edge.
- q.** Ability to support multiple mobile devices, at a minimum – iPhone 4, 4s, 5, 5c, 5s, 6, 6s; iPad 2, 3, 4; Google Nexus 9, 5, 4; Samsung Galaxy S5, S4, S3; and Samsung Galaxy Tablet 4.7.

1.1 Additional NMTD Requirements

The Offeror **must** provide all of the following technical requirements for the NMTD website:

- 1.1.1. A minimum of Six (6) standard page templates with the flexibility to move, adjust, and/or reorganize elements.
- 1.1.2. A fully integrated search engine.
- 1.1.3. User-generated event listings.

1.2 Additional Magazine Requirements

The Offeror **must** provide all of the following technical requirements for the Magazine website:

- a.** A minimum of Eight (8) standard page templates with the flexibility to move, adjust, and/or reorganize the elements.
- b.** A comprehensive semantic search engine for the entire website as well as publishable (but unpublished) content stored in the CMS.
- c.** Site-based registration for users.
- d.** Comprehensive taxonomic tagging of content.
- e.** Ability to integrate with mail list software.
- f.** Ability to support multiple, simultaneous photo and video contests.
- g.** Ability to support both one-off and bulk-load of content assets for the CMS.
- h.** Ability to support both one-off and bulk-export of all content assets for the CMS.
- i.** Ability to maintain and continue to support third-party e-commerce platforms and subscription service providers.

2. Design Requirements

NMTD and the Magazine's websites must provide a user experience that is aligned with the Brand. See Section I.B, Background. The websites must also be accessible and user friendly to Agency staff.

The Offeror **must** provide a separate thorough narrative addressing each design requirement below:

- a. The websites must be flexible, intuitive, and allow easy content management by internal staff, including the ability to add scripts and or tracking on the website; and including but not limited to the head and body tags. The websites must allow for a variety of customizations without the need for continual backend development. The Magazine has a preference for open source solutions.
- b. The websites must provide the best possible experience for users regardless of device, browser, or operating system.
- c. Content containers that are developed within a template in the CMS must be fluid, meaning that if an element is not used, then the content container will collapse without detracting from any layout.
- d. The Offeror must have project management skills and capabilities. The Offeror must provide weekly status reports on the initial design, deployment, pending projects; update the budget on a monthly basis; and provide a detailed style guide of templates and layout options including class names, standard image sizes, etc. for future implementation design consistency upon project completion and within thirty (30) days of launching the new websites.
- e. All design and development elements must be user-centric, and should enhance and improve the usability of the websites.
- f. The Offeror must provide excellent support systems and customer service to both NMTD and the Magazine. The Offeror must be available to troubleshoot problems and have fast response times.

Additional NMTD Requirements

The Offeror **must** provide a separate thorough narrative addressing each design requirement below:

- a. An intuitive website design must be developed with a traveler centric mindset with the following questions in mind: How does a traveler plan for a trip? What information does a traveler need for trip planning, before and during their travels?
- b. The overall architecture and design must be informed by research, testing, and analytics. The website must provide strong analytics.
- c. The use/expansion and preservation of current content, including the existing information on trails and the map driven content at the direction of the Agency.
- d. A "Partners Portal" must use an existing database, whereby industry partners can login and contribute content about their businesses, events, and deals to the website. The "Partners Portal" must allow for listings, events, and deals to be integrated site-wide and/or pages associated with their location in the State.

Additional Magazine Requirements

The Offeror **must** provide a separate thorough narrative addressing each design requirement below:

- a. A website must have the design, navigation, and handoffs developed in accordance with the Magazine's demographic profiles and use models.

C. QUALIFICATIONS

The Offeror must provide personnel resumes of those who have all of the following qualifications for the NMTD and Magazine websites:

- a. Superior graphic design capabilities, with a user centric focus.
- b. Ability to meet technical specifications with flexibility to tailor the product to meet our needs.
- c. Significant project management experience.
- d. Superior references from large consumer brands currently utilizing your services in digital development.
- e. Excellent support system with fast response times.
- f. Solid company with proven financial backing.

D. ORGANIZATIONAL EXPERIENCE

Offerors must:

- a. Provide a description of relevant corporate experience with Federal and State government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of website development, creation, and maintenance.
- b. Indicate how many responsive websites your firm has developed, and provide links to all existing websites for which your firm provides ongoing maintenance.
- c. Describe at least two (2) project successes and failures of website design and development engagement. Include how each experience improved the Offeror's services.

E. ORGANIZATIONAL REFERENCES

Offerors should provide a minimum of five (5) references from similar projects performed for private, State or large local government clients within the last three (3) years. **Offerors are required to submit APPENDIX F to the business references they list. The business references must submit the Reference Form directly to the designee described in Section I.D.** It is the Offeror's responsibility to ensure the completed forms are received on or before February 5, 2016 for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

Offerors shall submit the following Business Reference information as part of Offer:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) Client project manager name, telephone number, fax number and e-mail address.

F. 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 (3) 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" (APPENDIX E). 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" (APPENDIX B) and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made.

4. Financial Estimate

Offerors must provide an estimated cost proposal to include all specifications as defined in Section IV.

5. 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 G) must accompany any Offer. Any business wishing to receive the preference must complete and sign the form.

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factors – correspond to section IV.B and IV.C	Points Available
B. Technical Specifications	
B.1. Technical Requirements	300
B.2. Design Requirements	300
C. Qualifications	50
D. Organizational Experience	50
E. Organizational References	50
F. Business Specifications	
F.1. Financial Stability	Pass/Fail
F.2. Letter Of Transmittal	Pass/Fail
F.3. Signed Campaign Contribution Disclosure Form	Pass/Fail
F.4. Cost	250
TOTAL	1,000 points
F.5. New Mexico Preference - Resident Vendor Points per Section IV.C.6	
F.5. New Mexico Preference - Resident Veterans Points per Section IV.C.6	
GRAND TOTAL	

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 NMTD Requirements (See Table 1)

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response.

2. B.2 Magazine Requirements (See Table 1)

Points will be awarded based upon an evaluation of the responses to requirements as defined in Section IV.B 2.

3. B.3 Organizational Experience

Points will be awarded based on the thoroughness of response to Section IV.B.3, Organizational Experience.

4. B.4 Organizational References

APPENDIX F

5. C.1 Financial Stability (See Table 1)

Pass/Fail only. No points assigned.

6. C.3 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

7. C.4 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

8. C.5 Financial Estimate (See Table 1)

9. C.6 New Mexico Preferences

Percentages will be determined based upon the point based system outlined in NMSA 1978, § 13-1-21 (as amended).

A. New Mexico Business Preference

If the Offeror has provided their Preference Certificate, the Preference Points for a New Mexico Business is five (5%) percent.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided their Preference Certificate **and** the "Resident Veterans Certification Form," the Preference Points are one of the following:

- 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)

C. 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

REQUEST FOR PROPOSAL

Website Development and Redesign
16 418 1005 00700

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 APPENDIX G.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than December 21, 2015 no later than 5:00 PM MT/MDT. Only potential Offerors who elect to return this form completed 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.

Billie Neese, Procurement Manager
Web Design, Development, Maintenance
New Mexico Tourism Department
491 Old Santa Fe Trail
Santa Fe, NM 87501
E-mail: billie.neese@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 Tourism Department

Information Technology Agreement
Contract No. 16 418 1005 00700

THIS Information Technology Agreement (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Tourism Department**, hereinafter referred to as the NMTD and **[Insert Contractor Name]**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the **[CHOICE #1 - Procurement Code, NMSA 1978 13-1-28 et. seq; and Procurement Code Regulations, NMAC 1.4.1 et.seq; OR CHOICE #2 – New Mexico State Use Act (13-1C-1 NMSA 1978);]** the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

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

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

[CHOICE #3 - WHEREAS, all Parties agree that, pursuant to the [SUBCHOICE A - Procurement Code, 1.4.1.52 et. seq. OR SUBCHOICE B – New Mexico State Use Act (13-1C-1 NMSA 1978)] the total amount of this Agreement is \$60,000.00 or less, excluding taxes; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

- A. “Acceptance” or “Accepted” shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.
- B. “Application Deployment Package” shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable

- code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. "Chief Information Officer ("CIO")" shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.
- G. "Contract Manager" shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be Jordan Guenther or his/her Designated Representative.
- H. "Default" or "Breach" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations.
- I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. "DoIT" shall mean the Department of Information Technology.
- L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.
- N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.

- P. “GRT” shall mean New Mexico gross receipts tax.
- Q. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- R. “Independent Verification and Validation (“IV&V”)” shall mean the process of evaluating a Project and the Project’s product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
- S. “Know How” shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- T. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.
- U. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- V. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is **Insert Name of Project, if applicable; otherwise delete sentence**.
- W. “Project Manager” shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be **Insert Name** or his/her Designated Representative.
- X. “Qualified” means demonstrated experience performing activities and tasks with Projects.
- Y. “Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- Z. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- AA. “State Purchasing Agent (SPA)” shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- BB. “State Purchasing Division (SPD)” shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- CC. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- DD. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- EE. “**Source Code**” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily

read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.

- FF. “Turnover Plan” means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.
- C. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.
- D. License. [CHOICE #1 – If a software license is required, use the following language.] Contractor hereby grants Procuring Agency a [CHOICE #2- If a perpetual license is required, use the following language] non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: [Insert name of software and patent number if applicable]
- [CHOICE #3- If the license is required for the term of the Agreement, use the following language] non-exclusive, irrevocable, license to use, modify, and copy the [Insert name of Software and patent number if applicable] Software and any and all updates, corrections and revisions as defined in Article 2 and Exhibit A, for the term of this Agreement.

The right to copy the Software is limited to the following purposes: archival, backup and training. All archival and backup copies of the Software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1. Contractor agrees to maintain, at Contractor’s own expense, a copy of the Software Source Code to be kept by an escrow agent and to list the Procuring Agency as an authorized recipient of this Source Code. The Source Code shall be in magnetic form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall

replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the Software at the current revision level. Included with the media shall be all associated documentation which will allow the Procuring Agency to top load, compile and maintain the software in the event of a Breach.

2. If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the Software it provided the Procuring Agency; or, if this Agreement is terminated, or if the Contractor Breaches this Agreement, the Contractor shall make available to the Procuring Agency: 1) the latest available Software program Source Code and related documentation meant for the Software provided or developed under this Agreement by the Contractor and listed as part of the Services; 2) the Source Code and compiler/utilities necessary to maintain the system; and, 3) related documentation for Software developed by third parties to the extent that the Contractor is authorized to disclose such Software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the Source Code and documentation.

[CHOICE #3 – Not Applicable. The Parties agree there is no License.]

- E. Source Code. **[CHOICE #1 – If for a maintenance and operations contract, use the following language.]** The Contractor shall deliver any and all software developed as a result of maintenance releases by the Contractor. The Application Deployment Package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.

[CHOICE #2 – If Contractor will hold software in escrow, use the following language.] For each maintenance release, the Application Deployment Package shall be updated and shall be kept by an identified escrow agent at the Contractor's expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the storage media. The Procuring Agency shall be listed with said escrow agent as an authorized recipient of the storage media which shall contain the most recent application maintenance release deployment package.

[CHOICE #3 – If Contractor will not hold software in escrow, use the following language.] For each maintenance release, the Application Deployment Package shall be updated and shall be delivered to the Procuring Agency's at the Contractor's expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the Procuring Agency and shall be updated with each new application release deployment package at the Contractor's expense.

[CHOICE #4 – Not Applicable. The Parties agree there is no Source Code.]

F. The Procuring Agency's Rights.

1. Rights to Software. [CHOICE #1 – If the Procuring Agency has right to the Software, use the following language. - The Procuring Agency will own all right, title, and interest in and to the Procuring Agency's Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the Procuring Agency, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.] [CHOICE #2 – Not Applicable. The Parties agree the Procuring Agency does not have rights to the Software.]
2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
3. Rights to Data. [CHOICE #1 – If the Procuring Agency has right to the data, use the following language - Any and all data stored on the Contractor's servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the Procuring Agency. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Agency's data in any manner, or provide to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency. [CHOICE #2 – Not Applicable. The Parties agree the Procuring Agency does not have rights to the data.]]

ARTICLE 3 - COMPENSATION

- A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation under this Agreement shall not exceed [Insert Dollar Amount] [CHOICE #1- excluding New Mexico gross receipts tax. CHOICE #2 - including New Mexico gross receipts tax.] This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

[Use if a state price agreement is the procurement method] Compensation for a statewide price agreement shall not exceed \$200,000.00 per year. Contractor hereby agrees to perform work at or below the published maximum rates of the statewide price agreement as follows:

- [Insert professional service category(s) and define rate(s).]

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

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

[CHOICE #2 – The Contractor [Use either - shall OR shall not] be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

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

- E. Performance Bond. [CHOICE #1- If the amount of the Agreement exceeds \$1Million OR, if the Agreement is for custom developed software/application, OR Commercial Off the Shelf (COTS) software with greater than 20% Enhancement, OR for any other critical project execution concerns, use the following language.] Contractor shall execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a Performance Bond in the amount of [Insert Total Amount of agreed upon Performance Bond] in the name of the Procuring Agency. The Performance Bond shall be in effect for the duration of this Agreement and any renewals thereof. The required Performance Bond

shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The Procuring Agency's right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor or to the State of New Mexico as a result of Contractor's failure to perform.

[CHOICE #2 – Not Applicable. The Parties agree there is no Performance Bond.]

ARTICLE 4 – ACCEPTANCE

- A. **Submission.** Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).
- B. **Acceptance.** In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:
1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
 2. Complies with the terms and conditions of the **[CHOICE #1- RFP] [CHOICE #2 – state price agreement] [CHOICE #3 - Sole Source] [CHOICE #4 – other procurement method of (please specify)]**;
 3. Meets the performance measures for the Deliverable(s) and this Agreement;
 4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
 5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within **[INSERT # of days - recommend at not less than fifteen (15)]** Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

- C. **Rejection.** Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or

requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

[**CHOICE #1-** If the Agreement is based on a state price agreement and is for professional services *only* OR it is for a combination of professional services and tangible property/services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND DFA/CRB.

[**CHOICE #2-** If the Agreement is based on a state price agreement and is only for tangible property and/or services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT.

[**CHOICE #3-** If the Agreement is NOT based on a state price agreement and is for professional services *only*, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND DFA/CRB.

[**CHOICE #4-** If the Agreement is NOT based on a state price agreement and is for only tangible property and *does not include* professional services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT.

[**CHOICE #5-** If the Agreement is NOT based on a state price agreement and is for *both* professional services and tangible property/services, use the following language] THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT.

This Agreement shall terminate on [**Insert Termination Date**], unless terminated pursuant to Article 6. The contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – 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. **Appropriations.** By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.
- C. **Notice; Agency Opportunity to Cure.**
1. Except as otherwise provided in Paragraph (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.
- D. **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.***

ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency;
 2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Procuring Agency;
 3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
 4. Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 5. Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
 6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency's programs;
 7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction;
 8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
 9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the Procuring Agency for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Agency and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Agency, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and

documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

- B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:
1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
 2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

ARTICLE 8 – INDEMNIFICATION

- A. General. [Delete if the Agreement is between two public entities - The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees 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, during the time when the Contractor, its 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) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of the Procuring Agency, the Risk Management Division of the New Mexico General Services Department, and the DoIT.]

[Use if the Agreement is between two public entities - Neither party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.]

- B. [Delete if the Agreement is between two public entities - The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.]

ARTICLE 9 – INTELLECTUAL PROPERTY

[**CHOICE #1** – If purchasing only IT hardware/equipment, use the following language - Not Applicable. The Parties agree there is no Intellectual Property.]

- A. Ownership. [**CHOICE #2** - Use this provision if Procuring Agency is to own the Intellectual Property] Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Know How. The Procuring Agency shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency. Contractor shall notify the Procuring Agency, within fifteen (15) Business Days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the Procuring Agency and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Procuring Agency. If, by judgment of a court of competent jurisdiction, Intellectual Property or Know How are not deemed to be created or owned by the Procuring Agency, Contractor hereby acknowledges and agrees to grant to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.

[**CHOICE #3**- If the Contractor will own the Intellectual Property then delete the above language and insert the following language.] Contractor hereby acknowledges and grants to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:

1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
 2. Work with the Contractor to control the defense and settlement of the claim; and
 3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.
- B. Procuring Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:
1. Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
 2. Replace or modify the product or service so that it becomes non-infringing; or
 3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

ARTICLE 11 - WARRANTIES

- A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.
- B. Software. **[CHOICE #1- Use if only purchasing or developing software]** The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for **[INSERT # of years - recommend 6mo.-2yrs.]** years after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications. **[CHOICE #2 – Not Applicable. The Parties agree there is no Software.]**

ARTICLE 12 – CONTRACTOR PERSONNEL

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those

individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

[Insert Contractor Staff Name(s)]

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

ARTICLE 13 – STATUS OF CONTRACTOR

[CHOICE #1- Use if only purchasing IT hardware/equipment - Not Applicable.]

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

- A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:
1. Deliverable requirements, as outlined in Exhibit A;
 2. Due date of any Deliverable, as outlined in Exhibit A;
 3. Compensation of any Deliverable, as outlined in Exhibit A;
 4. Agreement compensation, as outlined in Article 3; or
 5. Agreement termination, as outlined in Article 5.
- B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:
1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
 - (a) the name of the person requesting the change;
 - (b) a summary of the required change;
 - (c) the start date for the change;
 - (d) the reason and necessity for change;
 - (e) the elements to be altered; and
 - (f) the impact of the change.
 2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

- A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
1. Providing the Project documentation;
 2. Allowing the IV&V vendor to sit in on the Project meetings; and
 3. Supplying the IV&V vendor with any other material as directed by the Project Manager.

APPENDIX D

FINANCIAL ESTIMATE

Please include a formal financial estimate to complete all items within the Scope of Work and adhering to all technical and mandatory specifications contained within Section IV of this RFP.

NOTE: Financial Estimate should be allocated in two (2) parts. One estimate to include all technical requirements from NMTD (newmexico.org) and one estimate to include all technical requirements from the Magazine (nmmagazine.com).

APPENDIX E

LETTER OF TRANSMITTAL FORM

APPENDIX E
Letter of Transmittal Form

RFP#: _____

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.

_____, 2014

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

APPENDIX F

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: Billie.Neese@state.nm.us 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 # 16 418 1005 00700
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, Tourism Department

Name: Billie Neese, Procurement Manager
Address: 491 Old Santa Fe Trail
Santa Fe, NM 87501
Telephone: 505-827-6733
Email: Billie.Neese@state.nm.us

no later than January 22, 2016, 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 G
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.