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COMMUNITIES ACROSS NEW MEXICO

2002 SUDDERTH DRIVE, RUIDOSO, NM 88345  
(575) 257-2368 - WWW.REC9NM.ORG

## **REQUEST FOR PROPOSALS (RFP)**

**Region 9 Education Cooperative**

**RFP 23000**

**Language Proficiency Assessment Services**

NIGP Commodity Code: 91838

RELEASE DATE: Wednesday, November 2, 2022

PROPOSAL SUBMISSION DATE: Tuesday, November 29, 2022

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## **i. INTRODUCTION**

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

Region 9 Education Cooperative (REC 9), on behalf of the New Mexico Public Education Department, is seeking proposals from qualified candidates to provide language proficiency assessments for students in elementary and secondary levels.

All information regarding this RFP can be found at <https://www.rec9nm.org/RFPS-Bids> under the Requests for Proposals section.

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

1. Provide language proficiency assessments, specifically Spanish language proficiency for students served in elementary and at the secondary level.
  - a. The assessment can only be provided in-person at school sites. The contractor and department communicate on the student maximum total count for each district or charter school, as reported in the Student Teacher Accountability System (STARS), BMEP Applications, or in other NMPED records, for the assessment.
  - b. Contractor and department communicate to verify eligible students as those who are served in a state-funded BMEP and have not yet scored at the proficient level (intermediate-high) on the assessment, the latter is applicable for a student that have taken assessment at any point in the previous fiscal years.
  - c. The contractor communicates with district and charter school staff on the Spanish Monolingual assessment to ensure that it is only used to measure Spanish language proficiency for students whose dominant language is Spanish and who may not yet have the English proficiency level necessary to take the regular Spanish test.
  - d. The contractor incurs a set up and processing cost per eligible student when rostering students. This cost is half of the testing cost for each student and can be invoiced even if the student did not start the test.
  - e. The remaining testing cost after rostering, to ensure full testing cost per student rostered, can be invoiced only after the student has completed the test.
2. Provide a Spanish screener for heritage learners, a group of students that represents the majority of the students in the state of New Mexico given our unique history and tie to the Spanish language.

The Spanish for heritage learners assessment can be used as a screener at the secondary grades to measure Spanish language proficiency for students who are newcomers or are Spanish heritage learners, and who's dominant language is Spanish.

  - a. The cost of such a screening at the secondary level is covered once per student by the NMPED.
3. Provide language proficiency assessments in other world languages, including those that are not taught in New Mexico public schools but are heritage languages or the home languages of students.
  - a. Assessments in multiple world languages. The NMPED will cover the cost of up to two

assessments taken per student for the purpose of earning the State Seal of Bilingualism-Biliteracy (SSBB) on the diploma of excellence in the 11<sup>th</sup> or 12<sup>th</sup> grades (juniors and seniors).

- b. Contractor and department communicate to verify eligible students as those for whom the NMPED has not covered two assessments in the 11<sup>th</sup> or 12<sup>th</sup> grades, as applicable for a student that have taken any assessment for the purpose of earning the SSBB at any point in the previous fiscal years.
4. Provide a custom consultation and development of proficiency assessments in tribal languages, which is needed to monitor the proficiency in tribal languages in New Mexico Native American tribes and in each of their students' future in their home or heritage language.

### ***C. PROCUREMENT AND CONTRACT CONTACT***

This RFP may result in contractual award(s) between the two parties (awarded Offeror and the Agency). This procurement may be used by other parties. The contract may be implemented for a term of one (1) year, and may be extended on an annual basis for up to three (3) years in one-year increments for a total of four (4) years, contingent upon sufficient funding and satisfactory work performance provided by the selected vendor.

In no case will the contract, including all renewals thereof, exceed a total of four (4) years in duration, as set forth in NMSA 1978, § 13-1-150. A contract awarded as a result of this RFP is contingent upon appropriation by the New Mexico Legislature or other funding sources for the period of this procurement, satisfactory contract compliance, and the Contractor's ability to successfully provide services. Should contract non-compliance be determined, the contract may be terminated or amended. A potential offeror or the offeror agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If the offeror fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the contract may be canceled effective immediately.

Region 9 Education Cooperative will manage all aspects of procurement whose name, address, telephone number, and email address are listed below:

Procurement Coordinator:

Name: Region 9 Education Cooperative  
Arissa Klumker  
Address: 2002 Sudderth Dr., Ruidoso, NM 88345  
Telephone: (575) 519-2001  
Fax: (575) 257-2141  
Email: [arissa.klumker@regionix.org](mailto:arissa.klumker@regionix.org)

**Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Region 9 Education Cooperative, Procurement Coordinator listed above. Offerors may contact ONLY Region 9

Education Cooperative, Procurement Coordinator regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond.

**Protests of the solicitation or award must be delivered by mail to the Region 9 Protest Manager.** ONLY protests delivered directly to the Protest Manager in writing in the 15 calendar day protest period will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted, nor will protests delivered to Region 9 Education Cooperative, Procurement Coordinator be considered properly submitted.

Protest Manager:

Name: Bryan Dooley  
Executive Director  
Region 9 Education Cooperative  
Address: 2002 Sudderth Dr., Ruidoso, NM 88345  
Telephone: (575) 257-2368  
Fax: (575) 257-2141  
Email: [bryan.dooley@regionix.org](mailto:bryan.dooley@regionix.org)

#### ***D. DEFINITION OF TERMINOLOGY***

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

1. **“Agency”** is the issuing agency of procurement, contracts, purchase orders and all aspects associated with contract/procurement management. Agency shall be used, unless otherwise written specifically identifying the entity.
2. **“Close of Business”** means 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
3. **“Contract”** means any agreement for the procurement of items of tangible personal property, services or construction.
4. **“Contract Manager”** means the individual selected by the Agency to monitor and manage all aspects of the contract resulting from this RFP.
5. **“Contractor”** means any business having a contract with a state agency or local public body.
6. **“Deliverable”** means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.
7. **“Department of Information Technology”** means the New Mexico Department of Information Technology which is responsible for operating the data center and all communications related items.
8. **“Desirable”** the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).
9. **“Determination”** means the written documentation of a decision of a procurement manager including findings of fact supporting a decision. A determination becomes part of the procurement file to which it pertains.
10. **“DFA”** means the Department of Finance and Administration for the State of New Mexico.
11. **“DFA/CRB”** means the Contracts Review Board of the Department of Finance and Administration for the State of New Mexico.
12. **“Evaluation Committee”** means a body appointed by the Agency management to perform the evaluation of offeror proposals.
13. **“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the

14. Evaluation Committee for submission for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.
15. **“Finalist”** is defined as an offeror who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that offeror for further consideration by the Evaluation Committee.
16. **“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.
17. **“Mandatory”** The terms “must,” “shall,” “will,” “is required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the offeror’s proposal.
18. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
19. **“New Mexico Employee”** means any resident of the State of New Mexico, performing the majority of their work within the State of New Mexico, for any employer regardless of the location of the employer’s office or offices.
20. **“Offeror(s)”** is any person, corporation, or partnership who chooses to submit a proposal.
21. **“Procurement Manager”** means the person or designee authorized by the Agency to manage or administer a procurement requiring the evaluation of competitive proposals.
22. **“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.
23. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
24. **“Request for Proposals”** or “RFP” means all documents, including those attached or incorporated by reference, used for soliciting proposals.



25. **“Requirements”** are obligatory and mean the system functions that are related to the organization’s goals and business opportunities. Requirements are defined by the project team and are usually prioritized.
26. **“Responsive Offer or Responsive Proposal”** means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.
27. **“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.
28. **“Solicitations”** means ITBs and RFPs.
29. **“State (the State)”** means the State of New Mexico.
30. **“State Purchasing Agent”** or **“SPA”** means the purchasing agent for the State of New Mexico or a designated representative.

***E. ELIGIBLE APPLICANTS***

Eligible applicants include public or private organizations with documented and demonstrated ability to provide Services as described in this RFP.

**ii. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement. Region 9 Education Cooperative reserves the right to alter or update the schedule. Region 9 Education Cooperative will make every effort to adhere to the schedule.

***A. SEQUENCE OF EVENTS***

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

Action	Responsible Party	Due Dates
Issue RFP	Region 9 Education Cooperative	<b>November 2, 2022</b>
Distribution List	Potential Offerors	<b>November 16, 2022</b>
Deadline to Submit Questions	Potential Offerors	<b>November 16, 2022</b>
Response to Written Questions	REC 9	<b>November 22, 2022</b>

<b><i>Submission of Proposal</i></b>	<b><i>Potential Offerors</i></b>	<b>November 29, 2022</b>
Proposal Evaluation	Evaluation Committee	<b>November 29 - December 2, 2022</b>
Selection of Finalists	Evaluation Committee	<b>November 29 - December 2, 2022</b>
Oral Presentations by Finalists (At Region 9)	Offerors/Evaluation Committee	<b>November 29 - December 2, 2022</b>
Finalize Contractual Agreements	Agency/Finalist Offerors	<b>November 29 - December 2, 2022</b>
Contract Awards	Agency/ Finalist Offerors	<b>November 29 - December 2, 2022</b>
Protest Deadline	REC 9	<b>15 days after award</b>

**B. EXPLANATION OF EVENTS**

The following paragraphs describe the activities listed in the sequence of events shown in **Section II –A SEQUENCE OF EVENTS** above.

**Issuance of RFP**

This RFP is being issued by Region 9 Education Cooperative on **November 2, 2022**. The RFP may be viewed and downloaded at <https://www.rec9nm.org/RFPS-Bids>.

**Distribution List**

Potential Offerors should complete the on-line *Distribution Form* to have their organization placed on the procurement distribution list. The form should be submitted by an authorized representative of the organization by 5:00 pm MDT/MST on **November 16, 2022**.

The procurement Distribution List will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to submit the on-line *Distribution Form* does not prohibit potential Offerors from submitting a response to this RFP. However, by not completing the Distribution Form by the time and date indicated, the potential Offeror’s representative shall not be included on the Distribution List communications, and will be solely responsible for obtaining responses to written questions and any amendments to the RFP.

LINK TO ACCESS THE DISTRIBUTION LIST ----> <https://forms.gle/uLPchhknY8ESWwC99>

**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 **November 16, 2022** at 5:00 p.m. Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be e-mailed to [contracts.procurement@regionix.org](mailto:contracts.procurement@regionix.org).

Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

### **Response to Written Questions**

Written responses to written questions will be provided via email and posted as an Addendum to the RFP on <https://www.rec9nm.org/RFPS-Bids> by the Procurement Manager on or before the time and date indicated in the Sequence of Events.

### **Submission of Proposal**

At this time, only electronic proposal submission is allowed. Do not submit hard copies until further notice.

Proposals must be submitted electronically through R9's electronic procurement system. A link to the Submission Portal can be found in Section *IV., B. Method of Submission*.

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON **November 29, 2022**. NO LATE PROPOSALS CAN BE ACCEPTED. The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks "Submit." Such electronic submissions will be considered sealed in accordance with statute.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically. The proposal submission system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the online proposal submission system: <https://www.formpl.us/form/4897813800550400>, will be deemed late. Further, a submission that is not fully complete and received via the proposal submission system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, NO LATE PROPOSAL CAN BE ACCEPTED.*

Proposals submitted by facsimile, or other electronic means other than through the proposal submission system, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals.

### **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.

### **Selection of Finalists**

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors by **November 29 - December 2, 2022** or as soon as possible. Only finalists will be invited to participate in the subsequent steps of the procurement. The schedule for the oral presentations/demonstrations will be determined at this time.

### **Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation and demonstration.

### **Oral Presentation and/or Product Demonstrations by Finalists**

Finalist Offerors, as selected per above, may be required to conduct an oral presentation at a venue to be determined as per the Sequence of Events, or as soon as possible thereafter. If oral presentations are held, Finalist Offerors may be required to make their presentations through electronic means (GoToMeeting, Zoom, etc). The Agency will provide Finalist Offerors with applicable details. Whether or not Oral Presentations will be held is at the discretion of the Agency.

### **Finalize Contractual Agreements**

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

### **Contract Awards**

After review by the Evaluation Committee the Agency will make an award(s) in accordance with the Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of the Agency.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to support the Scope of Work The most advantageous proposal may or may not have received the most points.

### **Protest Deadline**

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172 and applicable procurement regulations. ONLY protests delivered directly to the Protest Manager in writing

within the protest period will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Emailed protests will not be considered as properly submitted nor will protests delivered to Region 9 Education Cooperative, Procurement Coordinator be considered properly submitted.

The 15 calendar day protest period shall begin on the day following the actual date of Contract Awards and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below.

**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.**

The protest must be delivered to:

Name: Region 9 Education Cooperative  
Bryan Dooley, Executive Director  
Address: 2002 Sudderth Dr., Ruidoso, NM 88345  
Telephone: (575) 257-2368  
Fax: (575) 257-2141  
Email: [bryan.dooley@regionix.org](mailto:bryan.dooley@regionix.org)

Protests received after the deadline will not be accepted.

### **iii. GENERAL REQUIREMENTS**

#### ***A. ACCEPTANCE OF CONDITIONS GOVERNING THE PROCUREMENT***

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the electronic submission form. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in *Section IV., G. Evaluation* of this RFP.

#### ***B. INCURRING COST***

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of the proposed equipment and/or system shall be borne solely by the Offeror.

#### ***C. PRIME CONTRACTOR RESPONSIBILITY***

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

#### ***D. SUBCONTRACTORS/CONSENT***

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime

contractor must receive approval, in writing, from the Agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

**E. AMENDED PROPOSALS**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. Region 9 Education Cooperative personnel will not merge, collate, or assemble proposal materials.

**F. OFFEROR'S RIGHTS TO WITHDRAW PROPOSAL**

- 1) 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 electronically and signed by the Offeror's duly authorized representative.
- 2) The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

**G. PROPOSAL OFFER FIRM**

Responses to this RFP, including proposal prices 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.

**H. DISCLOSURE OF PROPOSAL CONTENTS**

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
  1. confidential financial information concerning the Offeror's organization; and
  2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
- b. If the offeror chooses to redact Proprietary and Confidential information, an additional but separate redacted version of Offeror's proposal, as outlined and defined in this RFP shall be submitted, on or before the Proposal Submission date as indicated in the Sequence of Events. A redacted proposal, in accordance with state law, containing the blacked-out proprietary or confidential information, shall be used in order to facilitate eventual public inspection (IPRA) of the non-confidential version of Offeror's proposal.

**IMPORTANT:** The price of products offered or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

***I. NO OBLIGATION***

This RFP in no manner obligates Region 9 Education Cooperative to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

***J. TERMINATION OF RFP***

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 Region 9 Education Cooperative.

***K. 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.

***L. LEGAL REVIEW***

Region 9 Education Cooperative 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.

***M. 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.

***N. 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.

***O. CONTRACT TERMS AND CONDITIONS***

1. The contract may follow the format specified and contain the terms and conditions set forth in the Sample Contract Appendix E. However, the Agency reserves the right to negotiate provisions in addition to those contained in this RFP (Sample Contract) with any Offeror. The

contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

2. Exceptions from the contract terms and conditions as set forth in the RFP Sample Contract are discouraged. 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.

3. Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX E) 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.

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

5. If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), proposed alternate terms and conditions may not 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 considered an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.

6. The initial contract resulting from this RFP will be for a period of one years. The contract may be extended beyond the original contract period by one-year or multi-year renewal options for a maximum of three additional years, at the Agency's sole discretion and by mutual agreement. The contract term will not exceed a total of four (4) years.

#### ***P. 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 and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

#### ***Q. 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.



**R. 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.

**S. 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.

**T. 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.

**U. 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.

**V. RIGHT TO PUBLISH**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from Region 9 Education Cooperative and or 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.

**W. OWNERSHIP OF PROPOSALS**

All documents submitted in response to the RFP shall become property of the Region 9 Education Cooperative.

**X. 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 Region 9 Education Cooperative.

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 procuring the Agency's written permission.

**Y. ELECTRONIC MAIL ADDRESS REQUIRED**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

**Z. USE OF ELECTRONIC VERSIONS OF THIS RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern.

**AA. NEW MEXICO EMPLOYEES HEALTH COVERAGE - Appendix A**

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

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

C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

**BB. CAMPAIGN CONTRIBUTION DISCLOSURE FORM- Appendix B**

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.

**CC. CONFLICT OF INTEREST - Appendix C**

Offers must complete, sign and return the Conflict of Interest Form, Appendix C as a part of their proposal. Failure to complete and return the signed unaltered form will result in disqualification.

**DD. DEBARMENT/SUSPENSION CERTIFICATION FORM - Appendix D**

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: 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; violation of Federal or state antitrust statutes related to the submission of offers; or 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.
    - i. 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.
    - ii. 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.
5. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.) 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. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

***EE. New Mexico Preferences***

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (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**

A copy of the certification must accompany Offeror's proposal.

**B. New Mexico Resident Veterans Business Preference**

A copy of the certification must accompany Offeror's proposal.

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

**The New Mexico Preferences shall not apply if/because the expenditures for this RFP includes federal funds.**

**iv. RESPONSE FORMAT AND ORGANIZATION**

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

**A. NUMBER OF RESPONSES**

Offerors shall submit only one (1) proposal.

**B. METHOD OF SUBMISSION**

All proposals must be submitted electronically.

LINK TO ACCESS THE PROPOSAL SUBMISSION SYSTEM --->  
<https://www.formpl.us/form/4897813800550400>

The Offeror need only submit a single electronic copy of the proposal, outlined below.

**C. SUBMISSION FORMAT**

All information for the technical proposal must be combined into a single pdf file/document for uploading. File naming convention <COMPANY NAME\_RFP 23000>

**D. TECHNICAL ISSUES**

For technical support issues contact Arissa Klumker (575) 519-2001

**E. PROPOSAL FORMAT**

All proposals must be submitted as follows:

- Typeface must be easily readable such as Ariel, Courier, or Times Roman and type size must be 12-point.
- The proposal may be no longer than 100 single-spaced pages as a whole. Supplemental information may be appended to the proposal.
- All pages shall be numbered.

**F. RESPONSE ORGANIZATION**

The proposal must be organized in the following format and must contain, at a minimum, all listed items in the sequence indicated. Offerors should respond in the form of a thorough narrative to each specification in correlation unless otherwise instructed. The narratives, including required supporting materials will be evaluated and awarded points accordingly.

## 1. Technical Proposal

Offeror shall provide a *Technical Proposal* (a. - e. detailed below)

### a. Background and Qualifications: (100 points)

Offeror Introduction including background that supports the ability of the offeror to carry out the proposal based on their experience and expertise.

- i. Years of experience on similar projects, describing previous projects and scale
- ii. List and describe specific places (national, states, districts, etc.) where similar services were provided
- iii. Applicable offeror expertise related to project; links to prior projects or reports developed are acceptable.

### b. References: (50 points)

Offeror shall provide three (3) letters of reference from prior partnerships related to the project proposed.

### c. Staff Qualifications: (50 points)

Provide the number of team members the offeror will assign to the project, a job description, and required qualifications for each team member that will be involved in contract execution.

- i. Lead project manager should be identified by name and with a resume provided.
- ii. In addition, if the offeror can provide resumes of those to be assigned to the project, please do.

### d. Implementation Plan: (200 points)

Offeror shall describe their ability to meet the scope of work as follows:

1. Provide language proficiency assessments, specifically Spanish language proficiency for students served in elementary and at the secondary level.
  - a. The assessment can only be provided in-person at school sites. The contractor and department communicate on the student maximum total count for each district or charter school, as reported in the Student Teacher Accountability System (STARS), BMEP Applications, or in other NMPED records, for the assessment.
  - b. Contractor and department communicate to verify eligible students as those who are served in a state-funded BMEP and have not yet scored at the proficient level (intermediate-high) on the assessment, the latter is applicable for a student that have taken assessment at any point in the previous fiscal years.
  - c. The contractor communicates with district and charter school staff on the Spanish Monolingual assessment to ensure that it is only used to measure Spanish language proficiency for students whose dominant language is Spanish and who may not yet have the English proficiency level necessary to take the regular Spanish test.
  - d. The contractor incurs a set up and processing cost per eligible student when rostering students. This cost is half of the testing cost for each student and can be invoiced even if the student did not start the test.

- e. The remaining testing cost after rostering, to ensure full testing cost per student rostered, can be invoiced only after the student has completed the test.
2. Provide a Spanish screener for heritage learners, a group of students that represents the majority of the students in the state of New Mexico given our unique history and tie to the Spanish language.  
The Spanish for heritage learners assessment can be used as a screener at the secondary grades to measure Spanish language proficiency for students who are newcomers or are Spanish heritage learners, and who's dominant language is Spanish.
    - a. The cost of such a screening at the secondary level is covered once per student by the NMPED.
  3. Provide language proficiency assessments in other world languages, including those that are not taught in New Mexico public schools but are heritage languages or the home languages of students.
    - a. Assessments in multiple world languages. The NMPED will cover the cost of up to two assessments taken per student for the purpose of earning the State Seal of Bilingualism-Biliteracy (SSBB) on the diploma of excellence in the 11<sup>th</sup> or 12<sup>th</sup> grades (juniors and seniors).
    - b. Contractor and department communicate to verify eligible students as those for whom the NMPED has not covered two assessments in the 11<sup>th</sup> or 12<sup>th</sup> grades, as applicable for a student that have taken any assessment for the purpose of earning the SSBB at any point in the previous fiscal years.
  4. Provide a custom consultation and development of proficiency assessments in tribal languages, which is needed to monitor the proficiency in tribal languages in New Mexico Native American tribes and in each of their students' future in their home or heritage language.

**e. Cost Proposal: (100 points)**

Offeror shall include all costs required to complete the scope of work outlined.

**2. Mandatory Requirements**

Proposals that do not meet the mandatory requirements may be deemed non-responsive and rejected.

- a. Appendix A - New Mexico Employees Health Coverage Form (Pass/Fail)
- b. Appendix B - Signed Campaign Contribution Form (Pass/Fail)
- c. Appendix C - Conflict of Interest Form(Pass/Fail)
- d. Appendix D - Debarment/Suspension Certification Form (Pass/Fail)
- e. Appendix E - Response to Contract Terms and Conditions (Pass/Fail)

**3. Supplemental Information**

- a. Offeror's Additional Terms and Conditions (Optional)
- b. Other supporting documentation to support the Technical Proposal.
- c. New Mexico Preferences

This procurement could result in contractual agreements between two parties; the procurement may be used by other parties (agency).

**G. EVALUATION**

**A. Evaluation Point Summary and Factors**

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.
3. The Evaluation Committee may use other sources to perform the evaluation.
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 may be selected as finalist Offerors, based upon the proposals submitted. Awards shall be made to the most responsible Offeror(s) whose proposals are most advantageous to the State taking into consideration the evaluation factors. The most responsible Offeror(s) is not determined by the highest score. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

<b><u>Evaluation Factors</u></b>	<b><u>Available Points</u></b>
The proposal is organized as described in <b>Section IV. Response Format and Organization</b> and contains all listed items in the sequence indicated.	Pass/Fail
<b>Background and Qualifications</b>	100
<b>References</b>	50
<b>Staff Qualifications</b>	50
<b>Implementation Plan</b>	200
<b>Cost Proposal</b>	100
New Mexico Employees Health Coverage Form - Appendix A	Pass/Fail
Signed Campaign Contribution Form - Appendix B	Pass/Fail
Conflict of Interest Form - Appendix C	Pass/Fail
Debarment/Suspension Certification Form - Appendix D	Pass/Fail
Response to Contract Terms and Conditions - Appendix E	Pass/Fail
Offeror's Additional Terms and Conditions	<b>Optional</b>
New Mexico Resident Business Preference	<b>Optional</b>
New Mexico Resident Veterans Business Preference	<b>Optional</b>

**i.**

**v. ADMINISTRATIVE REQUIREMENTS**

Awarded Offeror's will be required to provide the following documents before or within 30 of contract execution date:

- Proof of insurance as required in the SAMPLE CONTRACT Appendix E
- Contractor must be a registered business in the State of New Mexico with a CRS number



Tax Identification: The Offeror must possess a tax identification number

- Offeror must provide background checks, as directed by Region 9, for all persons within the organization that will be providing on-site services within New Mexico schools.
- Federal W-9

**APPENDIX A**

**NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM  
R9 RFP 23000**

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

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

C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <https://bewellnm.com>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

Signature of Offeror: \_\_\_\_\_

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

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM R9 RFP 23000

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND 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 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 a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

**“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.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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.

Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_

**(Completed by State Agency or Local Public Body)**

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

\_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

\_\_\_\_\_

Nature of Contribution(s)

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Purpose of Contribution(s)

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(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**

**CONFLICT OF INTEREST FORM  
R9 RFP 23000**

As utilized herein, the term “Vendor” shall mean that entity submitting a proposal to The Agency in response to the above referenced request for proposals.

The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge: No employee or Coordinating Council member of the Agency or New Mexico Public Education Department (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Agency employee, council member or close relative, with the exception of the person(s) identified below.

Vendor did not participate, directly or indirectly, in the preparation of specifications upon which the quote or offer is made. If the Vendor is a New Mexico State Legislator or if a New Mexico State Legislator holds a controlling interest in Vendor, please identify the Legislator:

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List below the names(s) of any New Mexico Public Education Department or Agency employee, board member or close relative who now or within the preceding 12 months (1) works for the Vendor; (2) has an ownership interest in the Vendor (other than as an owner of less than 1% of Vendor’s stock, if Vendor is a publicly traded corporation); (3) is a partner, officer, director, trustee or consultant to the Vendor; (4) has received grant, travel, honoraria or other similar support from Vendor; or (5) has a right to receive royalties from the vendor.

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**CERTIFICATION**

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

Signature of Offeror: \_\_\_\_\_

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

**APPENDIX D**  
**SUSPENSION STATUS FORM**  
**R9 RFP 23000**

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

**CERTIFICATION**

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

Signature of Offeror: \_\_\_\_\_

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



**APPENDIX E**

**RESPONSE TO R9 CONTRACT TERMS AND CONDITIONS  
R9 RFP 23000**

**Select one of the following:**

Offeror does **NOT** take any exceptions to the Contract Terms and Conditions as outlined in *Appendix F Sample Contract*

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

Offeror **DOES** take exceptions to the Contract terms and Conditions as outlined in *Appendix F Sample Contract*

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

**APPENDIX F**  
**SAMPLE CONTRACT**

PROFESSIONAL SERVICES CONTRACT

Contract # 239980000XX

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **REGION 9 EDUCATION COOPERATIVE (REC 9)**, hereinafter referred to as the “Agency,” and **<CONTRACTOR NAME>** hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the REC 9 Executive Director.

IT IS AGREED BETWEEN THE PARTIES:

**1. Engagement of Contractor.**

Agency agrees to engage Contractor on a non-exclusive basis to perform the services set forth herein, on a non-exclusive basis, to the Agency during the term of this Agreement in such amounts as the Agency shall require in its sole discretion. There is no requirement imposed upon the Agency pursuant to this Agreement to purchase any quota of services hereunder. Contractor agrees to perform, on a non-exclusive basis, the services under the terms and conditions set forth in this Agreement. Contractor is an independent contractor and is not an employee of the Agency. Contractor has provided, or intends to provide, similar services (as described in this Agreement) to others as a Contractor.

**2. Scope of Work.**

The Contractor shall provide professional services pursuant to the detailed scope of work and budget attached as Addendum A.

**3. Compensation.**

A. The Agency shall pay to the Contractor monthly payments for authorized services satisfactorily performed and expenses incurred pursuant to “ADDENDUM A,” such compensation not to exceed **<XXXXXX> (\$XXXXXX)**, inclusive of gross receipts tax (GRT). Such compensation 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. There is no requirement imposed upon the Agency pursuant to this Agreement to purchase any quota of services hereunder.

B Nothing contained in this Agreement shall require Agency to pay for any unsatisfactory work, as determined by Agency, or for work that is not in compliance with the terms of this Agreement. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. Contractor is responsible for notifying the Agency no less than 30 days prior to the services provided under this Agreement reaching the total compensation amount.

C. Payment is subject to availability of funds pursuant to the Appropriations provisions set forth in Paragraph 6 below and to any negotiations between the parties from year to year pursuant to

Paragraph 2, Scope of Work. All invoices MUST BE received by the Agency **no later than 5:00 pm MST on June 20, 2023**. Invoices received after such date WILL NOT BE PAID.

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

**4. Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL SIGNED BY THE REC 9 EXECUTIVE DIRECTOR. This Agreement shall terminate on **June 20, 2023** unless terminated pursuant to paragraph 5 (Termination), or paragraph 6 (Appropriations).

**5. Termination.**

A. Grounds. The Agency may terminate this Agreement prior to the end of the term for convenience or cause, as set forth in Paragraphs 5.B.1 and 5.B.3. below. The Contractor may terminate this Agreement as set forth in Paragraph 5.B.2 below.

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph 5.B.3., the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination. Agency shall pay Contractor only for authorized Services performed up to the date of termination.

2. Contractor shall give Agency written notice termination at least sixty (60) days prior to the intended date of termination. Agency may agree, in writing, to waive such sixty (60) day notice requirement.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon Agency's written notice to the Contractor if (i) the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) 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 6, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

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

**6. Appropriations.**

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

**7. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Contractor and its agents and employees shall not accrue leave, retirement, insurance or any other benefits afforded to employees of the Agency as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the Agency unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**8. Assignment.**

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

**9. Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement **without the prior written approval of the Agency.** No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency. A copy of an approved subcontract shall be sent to the Agency within 15 days of final execution.

**10. Release.**

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

**11. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency. Contractor further agrees to comply with all provisions of the Family Educational and Privacy Act (FERPA), 20 U.S.C. Sec. 1232 (g) and to hold Agency harmless from claims, complaints or causes of action arising from an alleged violation of FERPA.

**12. Compliance with Law and Policies.**

In the performance of this Agreement, Contractor shall abide by applicable laws of the State of New Mexico, the rules of the Public Education Department, and the policies and regulations of the Agency, as they may exist or be hereafter amended. Compliance shall include, but is not limited to:

A. Inspection of Public Records Act (IPRA)

In perpetuity, the Contractor shall strive to ensure that all reasonable requests to inspect public records are promptly and efficiently granted in accordance with the Inspection of Public Records Act (IPRA), NMSA 14-2-1 - 14-2-12; including, but not limited to, IPRA requested received by the Agency.

**13. Product of Service -- Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor. Contractor shall further not cite to materials, data, analyses or reports developed or acquired under this Agreement without written permission of the Agency Executive Director or the Executive Director's Designee. The Contractor agrees to prepare and execute any licenses or transfers of copyright necessary to vest ownership in the Agency of any materials developed or acquired by the Contractor under this Agreement.

**14. Amendment.**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**15. Merger.**

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

**16. Penalties for violation of law.**

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

**17. Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Jurisdiction and venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

**18. Records and Financial Audit.**

A. The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

B. Contractor shall provide background checks for any employees or sub-contractors that may have contact with children.

**19. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the Agency by certified mail.

**20. Invalid Term or Condition.**

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

**21. Enforcement of Agreement.**

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

**22. Notices.**

Notice by either party shall be in writing and shall be delivered by courier service, or U.S. mail, or by electronic mail to the receiving party designee as specified below. Electronic notification shall be deemed received at the time the party sending electronic notice receives written verification of receipt by the receiving party, including but not limited, to a read receipt.

To the Agency:  
Arissa Klumker  
2002 Sudderth Dr.  
Ruidoso, NM 88345  
[arissa.klumker@regionix.org](mailto:arissa.klumker@regionix.org)

To the Contractor:  
<,CONTRACTOR NAME or AGENCY>  
<C%>  
<ADDRESS>  
<CITY>, <STATE> <ZIP CODE>  
<PHONE NUMBER>  
<EMAIL>

**23. Authority.**

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

**24. Insurance.**

Contractor shall maintain in force during the entire term of this Agreement comprehensive general liability insurance and shall produce a copy of policy if requested by the Agency. Contractor understands and agrees that REC 9 shall not provide insurance coverage of any kind for Contractor or Contractor's employees or contract personnel. REC 9 recommends that Contractor obtain the insurance coverage that Contractor determines is appropriate. Contractor understands that Contractor may be personally liable for injuries or damages if Contractor does not obtain insurance coverage. REC 9 recommends that Contractor consult with an attorney if Contractor is uncertain about the need for or desirability of obtaining insurance.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the AGENCY EXECUTIVE DIRECTOR below.**

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

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

Bryan Dooley, REC 9 Executive Director

By: \_\_\_\_\_  
<AUTHORIZED SIGNER NAME>  
<AUTHORIZED SIGNER TITLE>  
<AGENCY (if applicable)>

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

REVIEWED BY REC 9 Chief Procurement Officer (CPO)

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

REVIEWED BY REC 9 IGA COORDINATOR

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



## Addendum A

This Addendum is attached to and forms part of the Contract between REC 9 and <CONTRACTOR NAME>. It is an integral part of the Contract and except as set forth herein, subject to its terms and conditions.

### A. Scope of Work.

<INSERT SOW>

Start Date: \*Contingent upon fully executed contract

End Date: June 20, 2023

### B. Budget.

This is a <FEE FOR SERVICE> or <FIXED PRICE> contract.

Description	Rate	Quantity	Total

The total amount of monies payable to the contractor under this Agreement shall not exceed \$XXXXXX.

### C. Administrative.

#### a. **Prior to start date, Contractor must provide:**

1. Proof of Professional Liability Insurance
2. R9 Vendor Forms (if applicable)
  - a. Direct Deposit Form
  - b. Vendor Information Form
  - c. ERB Screening Form
  - d. Federal W-9
3. Background Check (If applicable)

#### b. **Gross receipts tax (GRT)**

The contract amount is inclusive of gross receipts tax (GRT). Gross receipts tax (GRT) is the responsibility of the Contractor, for questions about GRT please consult a tax professional.

**c. Invoicing**

- Invoices shall align with the Budget and shall only include allowable costs as expressly written in *Addendum A, B. Budget*. Billing costs, including but not limited to, tax and professional services in excess of, or that do NOT align with the Budget shall only be allowable upon written approval from REC 9. Invoices will be subject to review and approval; billing inconsistencies may be subject to non-payment.
- All invoices MUST BE received by the Agency **no later than 5:00 pm MST on June 20, 2023**. Invoices received after such date WILL NOT BE PAID.
- **Final Invoices** shall be marked as such.

Invoices are to be submitted **monthly** to REC 9. Remit invoices to: [R9Contracts@regionix.org](mailto:R9Contracts@regionix.org)

**d. Oversight and direction for the implementation of the Scope of Work as outlined in *Addendum A* shall be directed by the XXXXX as follows:**

< NAME>;<EMAIL@XXXXX>

*This contract was procured under 23000 in accordance with State Statute.*

*I have reviewed and agree to the information as set out in Addendum A \_\_\_\_\_*  
**Contractors Initials**