

NEW MEXICO CORRECTIONS DEPARTMENT

REQUEST FOR PROPOSALS (RFP)

Inmate Commissary Services



RFP#21-770-8000-0001

RELEASE DATE: September 30, 2020

DUE DATE: November 25, 2020

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to create a partnership with the New Mexico Corrections Industries Division (INDUSTRIES) to establish and maintain an inmate commissary program on the grounds of the Penitentiary of New Mexico in Santa Fe and to provide commissary products to all NMCD state run facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, to provide commissary products to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

B. BACKGROUND INFORMATION

NMSA 1978, Section 33-8-13 NMSA allows for the operation of a private industry on the grounds of New Mexico Corrections Department correctional facilities. NM Corrections Industries wishes to lease the warehouse property for the purposes of running a canteen operation and providing employment opportunities for inmates at the Penitentiary of New Mexico Facility (PNM) Santa Fe, New Mexico. NM Corrections Industries believes that such employment would be consistent with rehabilitation of inmates and believes such program can be secured in a manner that does not unreasonably disrupt the normal routine and management of the correctional facility where the business will be located.

C. SCOPE OF PROCUREMENT

This procurement and the resulting contract shall be limited to Inmate Commissary Services. The term of the contract shall be for **4 years** with an option to extend for 4 additional years annually upon mutual agreement by both parties for a total of 8 years duration. In no case will the contract exceed a total of eight (8) years in duration. The proposed price for services must remain fixed through the duration of the contract term.

D. PROCUREMENT MANAGER

1. NM Corrections Department 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: Kathleen Branchal Garcia, CPO
Procurement Manager
Address: NM Corrections Department
P.O. Box 27116
Santa Fe, New Mexico 87502-0116
Telephone: (505) 659-6644
Email: kathleen.branchal2@state.nm.us

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

Name: Kathleen Branchal Garcia, Procurement Manager
Reference RFP Name: Inmate Commissary Services #20-770-8000-0001
Address: NM Corrections Department
4337 State Rd. 17
Santa Fe, New Mexico 87502

3. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the NMCD. **Protests of the solicitation or award must be delivered by mail to the Protest Manager.** As A Protest Manager has been named in this Request for Proposals, pursuant to NMSA 1978, § 13-1-172, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. 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 offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978 57-3-A-1 to 57-3A-7. See NMAC 1.4.1.45. As one example, no information that could be obtained from a source outside this request for proposals can be considered confidential information.

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

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

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

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

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

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

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

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

“**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.

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

“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.

"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.

F. PROCUREMENT LIBRARY

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

Procurement Regulations and Request for Proposal – RFP instructions:

<https://cd.nm.gov/request-for-proposal-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 Time Frames
1. Issue RFP	Agency	September 30, 2020
2. Acknowledgment of Receipt	Potential Offerors	October 6, 2020
3. Pre-Proposal Conference	Agency	NONE
4. Deadline to submit Questions	Potential Offerors	October 14, 2020
5. Response to Written Questions	Procurement Manager	October 21, 2020
6. Submission of Proposal	Potential Offerors	November 25, 2020
7. Proposal Evaluation	Evaluation Committee	December 1 thru December 8, 2020
8. Selection of Finalist	Evaluation Committee	December 9, 2020
9. RESERVED		
10. Oral Presentations	Agency/Finalist Offeror(s)	December 10, 2020
11. Finalize Contractual Agreements	Agency/Finalist Offeror	December 22, 2020
12. Contract Award	Agency/Finalist Offeror	December 23, 2020
13. Protest Deadline	Agency Legal	15 days from date of notification of award/non-award.

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the **New Mexico Corrections Department** on **September 30, 2020**

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" that accompanies this document, APPENDIX A, to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MST or MDT on **October 6, 2020**.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

3. Pre-Proposal Conference – Will not be held due to COVID-19

4. Deadline to Submit Written Questions

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

5. 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 Offeror's that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. Additional copies will be posted to: <https://cd.nm.gov/request-for-proposal-rfp/>

6. 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/DAYLIGHTTIME ON **Wednesday, November 25, 2020**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the **Inmate Commissary Services RFP#20-770-8000-0001**. Proposals submitted by facsimile, or other electronic means will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

7. 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.

8. Selection of Finalist

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

9. RESERVED

10. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation via a Zoom meeting or another form of conference meeting established by the Agency as per schedule Section II. A., Sequence of Events or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee.

11. Finalize Contractual Agreements

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

12. Contract Awards

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

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and NM Corrections Department taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department.

13. Protest Deadline

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

Protest Manager
Brienne Bigej
P.O. Box 27116
Santa Fe, NM 87502-0116

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors/Consent

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

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm until such time that an awarded contract is fully executed.

8. Disclosure of Proposal Contents

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

3. PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

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

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

Should an Offeror object to any of the terms and conditions as set forth in the RFP Sample Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Sample Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

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

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

16. Offeror's Terms and Conditions

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

17. Contract Deviations

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

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. Agency Rights

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

23. 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 procuring 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). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

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 the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to: <https://cd.nm.gov/request-for-proposal-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 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://www.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.

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 paragraph 2 above.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
 2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional

information as requested will render the Offeror nonresponsive.

- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is 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 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.

32. 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

A copy of the certification must accompany your proposal.

B. New Mexico Resident Veterans Business Preference

A copy of the certification must accompany your 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 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. NUMBER OF COPIES

1. Hard Copy Responses

Offeror's proposal must be clearly labeled and numbered and indexed as outlined in **Section III.C. Proposal Format**. Proposals must be submitted as outlined below. The **original copy** shall be clearly marked as such on the front of the binder. Each portion of the proposal (technical/cost) must be submitted in separate binders and must be prominently displayed on the front cover. Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

Offerors should deliver:

1. **Technical Proposals** – One (1) ORIGINAL, five (5) HARD COPIES, and (1) electronic copy of the proposal containing ONLY the Technical Proposal; ORIGINAL and COPY shall be in separate labeled binders. **The electronic version/copy can NOT be emailed.**
 - Proposals containing confidential information **must** be submitted as two separate binders:
 - **Unredacted** version for evaluation purposes
 - **Redacted** version (information blacked out and not omitted or removed) for the public file
2. **Commission Proposals** – One (1) ORIGINAL, Five (5) HARD COPY, and one (1) electronic copy of the proposal containing ONLY the Commission Proposal; ORIGINAL and COPY of Commission Proposal shall be in separate labeled binders from the Technical Proposals. **The electronic copy can NOT be emailed.**

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

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

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

Both the electronic submission and the original proposal must be received no later than the time and date indicated in Section II.B.6.

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

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

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

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

1. Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. 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 (Binder 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 Commission Proposal/Binder 2 only**)
 1. Organizational Experience
 2. Organizational References
 3. Oral Presentation
 4. Mandatory Specification
 5. Financial Stability - Financial information considered confidential should be placed in the **Confidential Information** binder.
 6. Signed Campaign Contribution Form
 7. New Mexico Preferences (If applicable)
- G. Other Supporting Material (If applicable)

Commission Proposal (Binder 2):

1. Completed Commission Response Form

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**

commissions, rates or expenses must occur only in Binder #2 on the commission 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

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

A. DETAILED SCOPE OF WORK

SCOPE OF WORK: Prospective Contractor will partner with the New Mexico Corrections Industries Division to establish and maintain an inmate commissary program on the grounds of the Penitentiary of New Mexico in Santa Fe.

Corrections Industries is seeking a proposal for the following:

A) Provide INDUSTRIES approved commissary products for sale to the inmates at “fair market value” to all of the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the contractor must be prepared to provide commissary products to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

B) Provide delivery of all commissary products to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, contractor must be prepared to deliver all commissary products to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

C) Provide a method for inmates to order commissary products that contains inmate ordering solutions which are efficient and cost effective and provide a method to directly charge inmate accounts for products purchased from the commissary.

D) Provide a process for the procurement of Holiday Packages purchased by family members up to 5 times per year per inmate to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the contractor must be prepared to provide Holiday Packages to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

E) Be responsible for the interface with CMIS (Corrections Management Inmate System) (As well as be responsible for the interface with any new updated system) to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the contractor must be prepared to provide interface capabilities to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

F) Provide Corrections Industries approved commissary and additional property (boots, clothing, tablets, etc.) for the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the Contractor must be prepared to provide

Corrections Industries approved commissary products for the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

G) Provide consumables/food products for employee benefit and use to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, respondent must be prepared to provide consumables/food products for employee benefit and use to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

H) Provide a training certification program for all inmates employed with the commissary program.

I) Provide ACA/Financial documentation in regards to the Commissary Operation to Corrections Industries

J) Provide a solution for the on-site distribution of products at each state and private prison facility in the state of New Mexico in regards to the purchased products for the inmate population.

K.) Provide compensation for approximately 15,000 square feet of warehouse space.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offerors **must**:

- a) provide a description of relevant corporate experience with 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 **inmate commissary services**. All commissary services provided to private sector will also be considered;

The Offeror shall include a description of the following in their proposal:

- i. The Offeror's experience in and ability to provide commissary services.
- ii. A list of similar contracts for correctional services, including location of facility, and name and contact information of governmental entity contracted with.
- iii. Offerors must provide a company profile that includes company ownership, number of employees both locally and nationally, company background/history and length of time that the company has been providing services;
- iv. Indicate how many commissary services contracts have been secured in the last two years and what percentage of business revenue is derived from those engagements;

- v. Describe at least two program successes and failures of any Commissary Services engagements. Include how each experience improved the Offeror's services.

2. Organizational References

Offerors should provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit APPENDIX F, Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror's responsibility to ensure the completed forms are received on or before **November 25, 2020 MST** for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the vendor'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, Para 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.

3. Oral Presentation

If selected as a finalist, Offerors agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Agency. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

4. Mandatory Specification

Offeror's must:

- a) Demonstrate the ability to administer the provision of inmate commissary services in multiple facilities dispersed geographically throughout the state;
- b) Demonstrate the ability to provide a commissary system specifically for the NMCD; and must demonstrate that it has the ability to meet all the provisions identified in the scope of work in particular A thru J.
- c) Provide a narrative on how it proposes to meet each specification outlined in the Scope of Work (A-K).

C. BUSINESS SPECIFICATIONS

1. Financial Stability

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

2. RESERVED

3. Letter of Transmittal Form

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

4. Campaign Contribution Disclosure Form

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

5. Commission

Offerors must complete the Commission Response Form in APPENDIX D.

Highest Commission Responsive Offer Bid

This Offeror's Bid

X Available Award Points

6. 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.

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. Organizational Experience	200
B. 2. Organizational References	50
B. 3. Oral Presentations	200
B.4. Mandatory Specification	250
C. Business Specifications	
C.1. Financial Stability	Pass/Fail
C.2. Performance Surety Bond	Pass/Fail
C.3. Letter Of Transmittal	Pass/Fail
C.4. Signed Campaign Contribution Disclosure Form	Pass/Fail
C.5. Proposed commission to NMCD on sales	300
TOTAL	1,000 points
C.6. New Mexico Preference - Resident Vendor Points per Section IV C. 6	
C.6. New Mexico Preference - Resident Veterans Points per Section IV C.6	

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

Make sure numbers match table

1. **B.1** Organizational Experience (200 Points Available)

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. The available points are divided amongst each category identified in Organizational Experience under Technical Specifications, **Section IV. B.**

2. **B.2** Organizational References (50 Points Available)

Points will be awarded based upon an evaluation of the responses to a series of questions as per Appendix F. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will be awarded zero (0) points.

3. B.3 Oral Presentation (200 Points Available)

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror a presentation agenda. (If no Oral Presentations are required all Offerors will receive the same amount of total points for this evaluation factor).

4. B.4 Mandatory Specifications (250 Points Available)

Points will be awarded based on the thoroughness and clarity of the response of the engagements cited and the perceived validity of the response. The available points are divided amongst each category identified in Mandatory Specifications under Technical Specifications, **Section IV. B, as indicated below**

- A.) Products for sale = 15
- B.) Delivery of products = 15
- C.) Method for Inmate ordering = 40
- D.) Process for Holiday Packages = 20
- E.) Interfacing with NMCD’s CMIS and new updated system = 20
- F.) Additional property product provided to CI for sale = 30
- G.) Consumables for employees = 15
- H.) Training Certification program = 30
- I.) ACA/Financial documentation = 10
- J.) Solution for on-site distribution = 15
- K.) Compensation proposed for space = 40

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

Pass/Fail only. No points assigned.

6. C.2 Performance Bond (See Table 1)

If required. Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

9. C.5 Commission (See Table 1) (300 Points Available)

The evaluation of each Offeror’s commission proposal will be conducted using the following formula:

$$\frac{\text{Offer's highest commission proposed}}{\text{-----}} \times \text{Available Award Points}$$

This Offeror's Bid

10.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 a copy of their Preference Certificate the Preference Points for a New Mexico Business is 5%.

B. New Mexico Resident Veterans Business Preference

If the Offeror has provided a copy of their Preference Certificate the Preference Point is 10%.

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 to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State taking into consideration the evaluation factors in Section IV will be recommended for award(as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A

REQUEST FOR PROPOSAL

Inmate Commissary Services

#20-770-8000-0001

ACKNOWLEDGEMENT OF RECEIPT FORM

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

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than **October 6, 2020, MST**. 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.

Kathleen Branchal Garcia, Procurement Manager
Inmate Commissary Services # 21-770-8000-0001
NM Corrections Department
P.O. Box 27116
Santa Fe, NM 87502-0116
E-mail: Kathleen.branchal2@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 Only

AGREEMENT BETWEEN CORRECTIONS INDUSTRIES
AND
CONTRACTOR CORPORATION

This AGREEMENT is made and entered into on the __ day of _____, 2020 by and between the New Mexico Corrections Department, Correction Industries Division (hereinafter referred to as ("INDUSTRIES")) acting through the Secretary of the New Mexico Corrections Department and the CONTRACTOR Corporation.

WHEREAS, NMSA 1978, Section 33-8-13 NMSA allows for the operation of a private industry on the grounds of New Mexico Corrections Department correctional facilities; and,

WHEREAS, CONTRACTOR is desiring to contract with INDUSTRIES to lease the warehouse property; operate a canteen operation and provide employment opportunities for inmates at the Penitentiary of New Mexico Facility (PNM) Santa Fe, New Mexico; and,

WHEREAS, INDUSTRIES believes that such employment would be consistent with rehabilitation of inmates; and,

WHEREAS, it is the intent of both parties that the operations pursuant to this AGREEMENT do not unreasonably disrupt the normal routine and management of the correctional facility where the business is located.

Now, therefore, in consideration of the premises, the parties hereto agree as follows:

1. **DEFINITIONS:** In addition to the words and terms elsewhere defined herein, the following words and terms as used herein shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

- A. "Corrections Industries" (INDUSTRIES) means a division of the New Mexico Corrections Department, responsible for overseeing and enforcing the terms and conditions of this AGREEMENT.
- B. "Penitentiary of New Mexico" (PNM) means the publicly operated prison facility located in Santa Fe County.

C. "Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an event of default hereunder.

D. "Department" means the New Mexico Corrections Department Corrections Industries

E. "Director" means the director of the Corrections Industries Division of the New Mexico Corrections Department, or designee.

F. "Premises" means the real property under the control of the Agency, including all improvements and structures thereon.

G. "Rent" means the amounts required to be paid to INDUSTRIES pursuant to paragraph 6.

I. "State" means the State of New Mexico.

J. "Warden" means the warden of the Penitentiary of New Mexico, New Mexico Corrections Department, or designee.

2. **DEMISE OF PREMISES:** INDUSTRIES, for and in consideration of the covenants and agreements contained in this AGREEMENT to be kept and performed by CONTRACTOR and upon the terms and conditions contained in this AGREEMENT, does lease, demise and let to CONTRACTOR approximately 15,000 square feet of warehouse space located on the Penitentiary of New Mexico (PNM) grounds, Santa Fe, New Mexico to operate a canteen warehouse enterprise.

3. **TERM:** This AGREEMENT shall not become effective until approved by the appropriate state government authorities. Subject to such approval, the term shall begin September 1, 2020 and shall terminate August 31, 2022 unless earlier terminated pursuant to the terms of section 27 or extended pursuant to the terms of section 4.

4. **OPTION TO EXTEND:** At the expiration of the initial term of this AGREEMENT INDUSTRIES shall have the option to extend the duration of the AGREEMENT upon the same terms and conditions set forth herein for a further period of one (1) year. In no event shall this AGREEMENT, including any one (1) year extension(s), extend beyond August 31, 2026.

5. **USE OF PREMISES:** CONTRACTOR agrees to use and occupy the Premises in accordance with the provisions of this AGREEMENT to include:

A. Use of approximately 15,000 square feet of warehouse space.

6. **RENT:** CONTRACTOR agrees to pay INDUSTRIES as rent for the Premises, without notice or demand, \$_____ per year payable in monthly installments of \$_____. The first payment is due on _____, and each subsequent installment shall be due and payable on or before the first of each month for every year thereafter. Rent payments shall be made payable to New Mexico Corrections Industries and shall be forwarded to the attention of the Director, New Mexico Corrections Industries, P. O. Box 27116, Santa Fe, New Mexico 87502-0116.

7. **COMMISSION ON SALES:** CONTRACTOR agrees to reimburse INDUSTRIES a ___percent commission on canteen sales. If INDUSTRIES requests to adjust pricing on any item, both CONTRACTOR and INDUSTRIES will negotiate a fair and equitable commission on those specific products in accordance with NMCD policy. Such commission shall be paid on a monthly basis per documents provided by CONTRACTOR and audited by INDUSTRIES. INDUSTRIES shall invoice CONTRACTOR and CONTRACTOR shall pay INDUSTRIES by check made payable to the Corrections Industries Division.

8. **DISTRIBUTION OF PRODUCT:** CONTRACTOR agrees to transport all of the canteen sales to each of the facilities that INDUSTRIES provides services to at no additional cost to INDUSTRIES.

9. **CONDITION OF PREMISES:** CONTRACTOR acknowledges that CONTRACTOR has made an on-site inspection and knows the condition of the Premises, that CONTRACTOR has received the Premises in good order and condition, and that no representations or warranties, express or implied, as to the condition or repair of the Premises has been made by INDUSTRIES or the Penitentiary of New Mexico.

10. **MAINTENANCE:**

A. It will be the responsibility of CONTRACTOR to ensure that the property is appropriately maintained and kept in good repair. Failure to report any urgent repairs needed which in turn result in significant damage to the facility and/or property may result in the termination of this AGREEMENT. CONTRACTOR will promptly repair, at CONTRACTOR's own expense, any and all damage caused by CONTRACTOR. All other routine maintenance and repairs will be the responsibility of INDUSTRIES and the New Mexico Corrections Department.

B. It will be the responsibility of the CONTRACTOR to notify INDUSTRIES if repairs are needed around the property regardless if the repairs are routine maintenance, or as a result of damage done by CONTRACTOR. If the repairs are the responsibility of INDUSTRIES, INDUSTRIES will then determine the nature and urgency of the reported repairs, as well as the appropriate method of completing the repairs in the most cost effective manner to benefit the State of New Mexico. It will be at the discretion of the Warden and the Director to approve when or if any repairs will be made.

C. For repairs that are the responsibility of CONTRACTOR, they will have thirty (30) days after the occurrence of damage to complete the said repairs. If CONTRACTOR fails to make such repairs within the time allotted, the CONTRACTOR will be notified in writing that the repairs will be completed by INDUSTRIES. INDUSTRIES may then proceed with making such repairs, and CONTRACTOR agrees to pay said cost to INDUSTRIES upon completion of the repairs. Such actions may be considered a breach of contract, which may result in the termination of this AGREEMENT in accordance with the provisions of paragraphs 27 and 55 set forth herein.

11. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS:**

A. CONTRACTOR shall not make, or permit to be made, any alterations, additions, or improvements whatsoever in or about the Premises, without first obtaining the written consent from INDUSTRIES, which consent shall not be unreasonably withheld. Such consent, if given, shall be subject to the express condition that any and all alterations, additions and improvements shall be done at CONTRACTOR's own expense and in accordance and compliance with all applicable local, state and federal ordinances, laws, rules, and regulations, and that no liens including mechanics, material, laborers, architects, artisans, CONTRACTORS, subcontractors, or any other lien of any kind whatsoever shall be created against or imposed upon Premises, or any part thereof. Notwithstanding the foregoing, INDUSTRIES and CONTRACTOR may enter into agreements in writing for capital improvements of the Premises which may provide for the sharing of the expenses for the improvements.

B. CONTRACTOR shall indemnify and hold INDUSTRIES harmless from all liability and claims of every kind, which might be made, or from judgments rendered against INDUSTRIES or the Premises on account of or arising out of such alterations, additions or improvements.

12. **OWNERSHIP OF ALTERATION, ADDITIONS AND IMPROVEMENTS:**

A. CONTRACTOR agrees with INDUSTRIES that any all alterations, additions and improvements permanently affixed to the Premises made at CONTRACTOR's own expense after having first obtained the written consent of INDUSTRIES in accordance with the provisions contained in paragraph 11, shall immediately merge and become a permanent part of the realty and any and all interest of CONTRACTOR therein shall immediately vest in INDUSTRIES, and all such alterations, additions and improvements shall not be removed by CONTRACTOR at the termination of this AGREEMENT.

B. Any such alterations, additions and improvements not permanently affixed to the Premises and not made pursuant to paragraph 1 (A) may be removed by CONTRACTOR at CONTRACTOR's expense on or before the termination of the AGREEMENT, and CONTRACTOR shall repair any damage caused thereby at CONTRACTOR's own expense,

such that the Premises shall be in as good order and condition as when the same were entered upon by CONTRACTOR. In the event that CONTRACTOR does not remove such alterations, additions and improvements at the expiration of this AGREEMENT, they shall become the property of INDUSTRIES.

13. **UTILITY AND OTHER CHARGES:** INDUSTRIES agrees to cover all utility and other charges of whatsoever kind and nature, including charges for electrical, water, and other services, which may be incurred in connection with CONTRACTOR's use of the Premises, and further agrees to indemnify and hold CONTRACTOR harmless therefrom. In the event of any dispute concerning CONTRACTOR's usage of utilities, INDUSTRIES shall be obligated to provide separate meters of the utilities being used by CONTRACTOR to substantiate and document CONTRACTOR's usage of the utility services.

14. **ASSIGNMENT AND SUBLETTING:**

A. CONTRACTOR may not assign, sublet, mortgage, subordinate, alienate or hypothecate the Premises or any part thereof without the express written consent of INDUSTRIES, which consent shall not be unreasonably withheld or delayed.

B. The consent of INDUSTRIES to any assignment or subletting shall not discharge CONTRACTOR from liability upon the agreements and covenants of this AGREEMENT, and CONTRACTOR shall remain liable for the full and complete performance of all the terms, conditions, covenants, and agreements contained in this AGREEMENT as a principal and not as a guarantor or surety to the same extent as though no assignment or sublease has been made.

C. Any consent of INDUSTRIES to such assignment or subletting, shall not operate as a consent to further assignment or subletting or as a waiver of this covenant and agreement against assignment and subletting. Following any such assignment or subletting, the assignee and/or sublessee shall be bound by all of the terms, conditions, covenants, and agreements contained in this AGREEMENT including the covenant against assignment and subletting.

15. **INSPECTION: CONTRACTOR** shall permit INDUSTRIES in conjunction with the PNM Warden or his designee or the Director or his designee to come upon the Premises at all reasonable times in order to inspect the condition, use, safety or security of the Premises and any improvements thereon.

16. **SIGNS AND PERSONAL PROPERTY:** CONTRACTOR may place signs on the Premises only with the advance written approval of INDUSTRIES in conjunction with the PNM Warden or his designee, such approval shall not be unreasonably withheld by INDUSTRIES. All personal property, signs and improvements of CONTRACTOR, its employees, agents, and invitees kept on the Premises shall be at the sole risk of CONTRACTOR, and INDUSTRIES shall not be liable for any damage thereto.

17. **REQUIREMENTS OF PUBLIC AUTHORITY:** CONTRACTOR agrees with INDUSTRIES that during the term of this AGREEMENT, CONTRACTOR shall, at their own cost and expense, promptly observe and comply with all applicable rules and regulations of INDUSTRIES and local, state and federal ordinances, laws, rules and regulations affecting the Premises or appurtenances thereto, or any part thereof, or CONTRACTOR's operations thereon, whether the same are in force and effect at the time of commencement of the term of this AGREEMENT or may in the future be passed, enacted, or directed, and CONTRACTOR shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that may in any manner arise out of or be imposed because of the failure of CONTRACTOR to comply with the covenants and AGREEMENT of this Paragraph.

18. **SCOPE OF WORK:** Partner with the New Mexico Corrections Industries Division (INDUSTRIES) to establish and maintain an inmate commissary program on the grounds of the Penitentiary of New Mexico in Santa Fe.

CONTRACTOR will: (Refer to Attachment "A" Scope of Work)

19. **EQUAL OPPORTUNITY COMPLIANCE:** CONTRACTOR agrees to abide by all state and federal laws and rules and regulations, and executive orders of the Governor of the state of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the state of New Mexico, the CONTRACTOR agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under activity performed under this AGREEMENT and authorizes INDUSTRIES to conduct investigations, including interviews of any and all parties to this AGREEMENT, into complaints of violation of laws, civil rights and equal opportunity compliance, environmental issues, workplace safety, disability laws, employer-employee relations and all other laws governing operation of the workplace. If CONTRACTOR is found to be not in compliance with these requirements during the life of this AGREEMENT, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

20. **INDEMNITY:** CONTRACTOR shall defend, indemnify and hold INDUSTRIES harmless from action, proceedings, loss, costs, damages, liability and all other liabilities and expenses, including but not limited to attorney's fees, and cost of litigation incurred by INDUSTRIES by reason of any claim against INDUSTRIES arising out of this AGREEMENT or the operations of the Premises, except for the losses, claims or damages that are directly attributable to INDUSTRIES's failure to perform its duties or obligations as required herein. INDUSTRIES liability will be controlled or determined by the NM Tort Claims Act.

21. **NOTICE:** All notices relating to this AGREEMENT shall be in writing and shall be delivered to the following addresses and, if mailed, sent certified or registered mail, return receipt requested:

CONTRACTOR Corporation:

INDUSTRIES:

Corrections Industries Box 27116
Santa Fe, NM 87502

Or to such other addresses as either party may give to the other party by written notice as set forth above.

22. **WAIVER:** No failure on the part of INDUSTRIES to exercise, and no delay in exercising any right, power or privilege hereunder, shall preclude other or further exercise thereof, or the exercise of any other right, power or privilege. The rights or limitations herein provided are cumulative and not exclusive of any rights and remedies otherwise provided by law or equity.

23. **EXPIRATION:** Upon termination of this AGREEMENT by reason of the expiration of the term, CONTRACTOR will immediately surrender to INDUSTRIES possession of the Premises and all improvements thereon in good condition and repair, damage by the elements and reasonable wear and tear is expected.

24. **INSURANCE:**

A. CONTRACTOR shall carry and maintain in full force and effect during the term of this AGREEMENT, at CONTRACTOR's sole cost and expense and as additional rent hereunder, public liability insurance coverage for bodily injury in the amount of \$400,000.00 each occurrence, and for property damage in the amount of \$100,000.00 each occurrence, or a combined limit for bodily injury and/or property damage in the amount of \$750,000.00.

B. INDUSTRIES shall be named as an additional insured on all policies of insurance. All policies of insurance required by this AGREEMENT shall be in standard form, and written by qualified insurance companies authorized to do business in New Mexico. Each insurance policy shall set forth:

1) The dates of inception and expiration of the insurance.

2) A statement by the insurance carrier that thirty (30) days prior written notice to INDUSTRIES shall be given in the event of cancellation, material change, alteration or amendment of the policy.

C. Evidence of the insurance coverage required by this AGREEMENT shall be provided to INDUSTRIES upon the execution of this AGREEMENT.

25. **TAXES:** All taxes and special general assessments of any kind and nature, extraordinary as well as ordinary, which may be levied upon the personal property located upon the Premises or CONTRACTOR's operations thereon shall be paid by CONTRACTOR at the time when the same shall become due and payable.

26. **DESTRUCTION:** CONTRACTOR agrees with INDUSTRIES that if at any time during the term of this AGREEMENT the Premises shall be totally or partially destroyed by fire, flood, earthquake, or any natural calamity, INDUSTRIES shall have the option to repair the Premises in as good condition as they were immediately prior to such calamity; provided, however, that such rebuilding or repair shall be commenced after notice in writing to INDUSTRIES of such destruction or damage. In such case, a just and proportionate part of the rental herein specified shall be abated until the Premises shall have been rebuilt and repaired. In case, however, INDUSTRIES shall, within thirty (30) days following notice in writing to it of such damage, elect not to rebuild or repair the Premises, INDUSTRIES shall so notify CONTRACTOR in writing and thereupon, this AGREEMENT may at either party's election by written notice terminate and become null and void. Moreover, in no event shall INDUSTRIES have any duty or obligation to rebuild or repair any personal property owned or leased by the CONTRACTOR and used to carry out the purpose for which CONTRACTOR is leasing the Premises.

27. **DEFAULT OF CONTRACTOR AND REMEDIES OF INDUSTRIES:**

A. If either of the following "Events of Default" shall occur:

1) CONTRACTOR's breach or default under any term, covenant or condition of the AGREEMENT except a breach of default which involves life, health, safety or security issues; or

2) CONTRACTOR's failure to pay when due any insurance premiums required to be paid hereunder;

B. INDUSTRIES may give CONTRACTOR written notice by certified or registered mail, specifying what "Event of Default" has occurred. Unless the "Event of Default" is remedied or obviated by CONTRACTOR within thirty (30) days after receipt of such notice, or unless within such thirty (30) day period CONTRACTOR shall have commenced and shall continue to take action for the purpose of remedying or obviating such Event of Default and shall thereafter, in good faith, prosecute such action to completion, INDUSTRIES may declare the forfeiture of the interest of CONTRACTOR in this AGREEMENT by giving CONTRACTOR written notice of termination by certified or registered mail, and this AGREEMENT shall terminate forthwith.

C. CONTRACTOR's breach or default of any term, covenant or condition of this AGREEMENT which involves life, health, safety or security issues shall be grounds for immediate termination of this AGREEMENT by INDUSTRIES. This AGREEMENT shall

immediately terminate upon CONTRACTOR's receipt of written notice of termination by certified or registered mail.

D. Upon receipt of a notice of termination, CONTRACTOR shall immediately surrender the Premises, together with all improvements, buildings and fixtures thereon except as otherwise provided herein. If CONTRACTOR fails to surrender the Premises, INDUSTRIES may take possession of the Premises, together with all improvements, buildings and fixtures thereon, either by force, summary proceedings or by any other suitable action or proceedings at law or otherwise, without being liable for damages. CONTRACTOR agrees that in the event of forfeiture, it shall, upon request of INDUSTRIES, assign, convey and transfer to INDUSTRIES the title to all improvements, buildings and fixtures on the Premises. Under this remedy, CONTRACTOR shall be liable for the costs, expenses, and attorney's fees of INDUSTRIES in enforcing its rights under this AGREEMENT, including injunctive relief or the obtaining of possession and INDUSTRIES shall have a lien on all property of CONTRACTOR on the Premises as security for the payment of such rental costs, expenses and attorney's fees. No termination of this AGREEMENT shall relieve CONTRACTOR of their liabilities and obligations under this AGREEMENT.

28. **BANKRUPTCY AND CONDEMNATION:** CONTRACTOR agrees with INDUSTRIES that should CONTRACTOR make an assignment for the benefit of creditors or should be adjudged a bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver or trustee should be appointed by any court of competent jurisdiction for CONTRACTOR because of any insolvency, or any execution, attachment, replevin, or other court order should be issued against the CONTRACTOR or any of the CONTRACTOR's property, whereby the Premises or alterations, additions, or improvements thereon, shall be attempted to be taken or occupied by someone other than CONTRACTOR, the occurrence of any such event shall be deemed a breach of this AGREEMENT, and, in such event, INDUSTRIES shall have the option to terminate this AGREEMENT and to re-enter the Premises and take possession thereof, whereupon CONTRACTOR shall quit and surrender the Premises peaceably to INDUSTRIES.

29. **INMATE LABOR:** Persons employed by CONTRACTOR on the Premises, except administrative, supervisory personnel, shall be inmates of the New Mexico Corrections Department as approved for such employment pursuant to the Department's CD-policies and procedures. Inmates used pursuant to this AGREEMENT shall not be considered or construed as employees as defined by the Fair Labor Standards Act. CONTRACTOR shall contract 12 to 20 inmates depending on the needs of CONTRACTOR. Inmates contracted by CONTRACTOR shall be paid in compliance with Corrections Department policy 110600 as billed by INDUSTRIES. Such wages shall be paid on a monthly basis by check made payable to the Corrections Industries Division who will pay the PNM Level II for deposit in the inmate trust account. In consideration for managing and administering the inmate payroll and for inmate compensation, CONTRACTOR will compensate INDUSTRIES the sum of (\$) per hour per inmate. The use of said inmate labor is per the approval of the Warden of the PNM and the Director or designee, and all costs associated with obtaining inmate labor will be paid by CONTRACTOR.

30. **CONTRACTOR WILL PROVIDE COMPENSATION COST FOR AN INDUSTRIES OFFICER LIAISON:** CONTRACTOR agrees to reimburse INDUSTRIES \$ per hour for salaries and benefits paid to an Industries liaison. The Corrections Officer is an INDUSTRIES employee and will act as the liaison between CONTRACTOR and INDUSTRIES, facilitating canteen operations and ensuring standard operating procedures are being carried out in the most efficient manner possible, and assisting INDUSTRIES as much as practical to ensure a successful partnership. The Officer's hours will be flexible to meet needs, but will be on a 40-hour workweek. The Officer will assist CONTRACTOR in accomplishing designated tasks and will also supervise the inmate work force provided by PNM. INDUSTRIES shall pay the officer based upon an average 40 hour work week, consistent with Corrections Department Policy and the Fair Labor Standards Act (FLSA). Such wages shall be paid on a monthly basis as billed by INDUSTRIES by check made payable to the Corrections Industries Division
31. **PRIVATE ENTERPRISE:** The parties acknowledge that CONTRACTOR is a limited liability company and shall be subject to all laws governing the operation of a similar New Mexico limited liability company; provided, however, that the provisions of the Unemployment Compensation Law shall not apply to inmate employees.
32. **NOT A JOINT VENTURE:** Nothing in this AGREEMENT shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto.
33. **ENVIRONMENTAL PROTECTION:**
- A. Within the limits of their respective legal powers, the parties to this AGREEMENT shall protect the premises against pollution of its air, ground and water. CONTRACTOR shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations conditions or instructions in effect or prescribed by the said Environmental Protection Agency, or any federal, state, interstate or local governmental agency are hereby made a condition of this AGREEMENT.
- B. CONTRACTOR will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from activities of the program, CONTRACTOR shall be liable to restore the damaged resources.
- C. CONTRACTOR must obtain approval in writing from INDUSTRIES before any pesticides or herbicides are applied to the premises.

34. **INGRESS AND EGRESS:** CONTRACTOR shall enter and exit the Premises through the main gate at PNM. CONTRACTOR shall also permit other authorized persons unencumbered access to any and all areas of the premises in order to fulfill needed work, repairs, or inspections.

35. **AMENDMENTS:** It is understood and agreed between the parties that this AGREEMENT shall not be altered, changed, or amended except by instrument in writing executed by the parties.

36. **GOVERNING LAW:** This AGREEMENT shall be governed by and construed in accordance with the laws of the State of New Mexico.

37. **SEVERABILITY:** If any provision of this AGREEMENT, or any application thereof, shall be declared invalid or unenforceable by any court of competent jurisdiction, the remainder of this AGREEMENT, and any other application of such provision, shall continue in full force and effect.

38. **SUCCESSION:** This AGREEMENT shall extend to and be binding upon the heirs, successors and assigns of the parties.

39. **CONDEMNATION:** In the event that all or any portion of the Premises is condemned by any governmental body or agency, this AGREEMENT shall automatically terminate as to the part so taken, provided however, that CONTRACTOR may terminate the AGREEMENT for the portion of the Premises remaining by notifying INDUSTRIES in writing. Should CONTRACTOR make such determination, INDUSTRIES shall be entitled to thirty (30) days written notice. In the event that this AGREEMENT for the portion of the Premises remaining is not terminated, the remaining rent shall be adjusted so that CONTRACTOR shall pay that portion of the rent remaining in proportion to the Premises remaining after the condemnation. INDUSTRIES shall be entitled to all compensation awarded or paid and CONTRACTOR shall have no right to any part thereof.

40. **MISCELLANEOUS:** CONTRACTOR agrees to compensate INDUSTRIES for work performed at the PNM Warehouse. INDUSTRIES will provide CONTRACTOR with a quote on the work requested. Compensation shall be made upon completion of such work and within 30 days of receipt of billing.

41. **EARLY TERMINATION OF AGREEMENT:**

A. INDUSTRIES may terminate this AGREEMENT in the event that INDUSTRIES determines that the premises are needed by any agency or other unit of the State of New Mexico for the conduct of state business. Should INDUSTRIES decide to terminate this AGREEMENT, CONTRACTOR shall be entitled to sixty (60) days notice, in writing, from INDUSTRIES of early termination of this AGREEMENT.

B. Either party may terminate this AGREEMENT upon giving the other party sixty

(60) days written notice. In the event of such termination by CONTRACTOR, the rent due hereunder shall be prorated to the date of termination. In the event that this AGREEMENT is terminated, CONTRACTOR will have three (three) months to remove all of their product inventory and racking.

42. **NO THIRD PARTY BENEFICIARY:** This AGREEMENT is for the benefit of the parties to the AGREEMENT and nothing herein shall be considered to be intended for the benefit of any third party.

43. **INMATE EMPLOYMENT:** CONTRACTOR will use such Premises for purposes of canteen operations using inmate labor supplied by PNM. All inmates hired for the canteen operations shall be inmates at the PNM Level II who volunteer for such employment, but who must be assigned by the institution and approved by the warden. Inmate time cards, pay records, attendance records and performance records will be kept by INDUSTRIES. A summary report shall be provided to the business manager at INDUSTRIES on a monthly basis.

44. **SECURITY SUPERVISION:** The Corrections Department will provide such security officers and coverage as the correctional facility warden believes are necessary for the supervision and safety of inmate employees and CONTRACTOR personnel at the times they are working.

45. **CIVILIAN PERSONNEL:** Any civilian CONTRACTOR employee shall be subject to an initial and continuing security clearance review by the New Mexico Corrections Department. CONTRACTOR shall submit the names, dates of birth and social security numbers of the civilian employees, together with a release of information signed by the employee on forms provided by PNM for a security clearance before entrance into the security perimeter. CONTRACTOR's employees assigned to the prison facility shall be subject to initial background checks and drug tests. Any civilian personnel employed by CONTRACTOR shall attend an annual orientation program designated by the prison facility warden or the Director of INDUSTRIES. Training records will be kept by INDUSTRIES to meet ACA standards. CONTRACTOR employees shall cooperate in any way feasible and shall immediately notify correctional officers of any security problems that come to their attention. All CONTRACTOR personnel shall comply with the written policies and procedures of the New Mexico Corrections Department and the Laws of the State of New Mexico. CONTRACTOR personnel who fail to comply with Corrections Department policies and procedures or otherwise are disruptive to the operation of the prison facility may have their security clearances revoked by the PNM Warden or his designee.

46. **SECURITY CLEARANCES AND BACKGROUND CHECKS:** CONTRACTOR and its employees, agents, or independent agents agree to cooperate with and abide by any and all rules and regulations set forth by the New Mexico Corrections Department so as not to interfere with the daily operations of the NMCD or to jeopardize the health and safety of any employees, inmates or the general public. CONTRACTOR and its employees, sub-CONTRACTORS, or their agents who will have access to NMCD properties and inmates are subject to security clearances and/or background checks.

Any security clearances and/or background checks required by the NMCD for CONTRACTOR's employees, CONTRACTOR's agents, employees or other agent must be obtained prior to commencement of the job. NMCD reserves the right to deny any employee, agent, or independent agent of CONTRACTOR access to NMCD property should that individual fail the criteria required for the security clearance or be found to be in violation of NMCD policies and procedures.

NMCD reserves the right to provide and escort and/or require full time supervision for CONTRACTOR and its employees, agents, or independent agents during any or all phases of a project should user agency feel it is necessary.

NMCD reserves the right to escort any employee, sub-CONTRACTOR or other agent of CONTRACTOR off of NMCD property for any inappropriate conduct or actions that jeopardizes the safety, security, or well being of the facility. If such conduct or action should occur, then, this agreement may be canceled immediately.

47. **COOPERATION WITH NMCD INVESTIGATIONS:** In addition to the foregoing, the CONTRACTOR must furnish all information and reports required by, or pursuant to, the rules, regulations, and policies of the NMCD, and will permit access to, and the interview of, its employees, sub-CONTRACTORS or other agents as well as the examination and copying of its records unless such materials are legally privileged by the NMCD Office of Professional Standards, the Security Threat Intelligence Unit and the Equal Employment Opportunity Officer and by investigators for the United States Department of Justice, the New Mexico Department of Public Safety, the New Mexico General Services Department, Risk Management Division, and/or the New Mexico Workforce Solutions Department, and will otherwise fully cooperate with any such investigation. Any willful violation of this requirement will be grounds for immediate termination of this agreement and removal of the CONTRACTOR from the property.

48. **PRISON RAPE ELIMINATION ACT (PREA) STANDARDS:** Any Contractor providing services to NMCD who has direct contact with inmates or parolees who are in the care and custody of the State of New Mexico, shall adhere to and require its employees or other persons performing the services contemplated by this Agreement to adhere to PREA standards while providing such services for and in DEPARTMENT facilities. Any new contract or contract renewal shall provide for agency contract monitoring to ensure that such persons are complying with the PREA standards. [§115.12]

49. **CRIMINAL JUSTICE INFORMATION (CJI) SECURITY COMPLIANCE** Any Contractor providing services to NMCD that has access to CJI will be required to review, acknowledge and adhere to the Criminal Justice Information System (CJIS) Security Addendum, review other CJIS related documents as identified in the CJIS Security Addendum and complete the most current level of CJIS Security Training; at the Contractors expense.

The CJIS Security Addendum is a uniform addendum to an agreement between a Criminal Justice Agency and a private contractor, approved by the Attorney General of the United States, which specifically authorizes access to CJI, limits the use of the information to the purpose for which it is provided, ensures the security and confidentiality of the information consistent with existing regulations, provides for sanctions, and contains such other provisions as the Attorney General may require.

50. **INMATE COUNTS:** Normal counts of inmates employed by the canteen operation will be conducted on site and should not interfere with the work in progress. In the event that emergency counts are necessary, the warden of the prison facility will make a good faith effort not to disrupt work in progress. The warden or his designee of the prison facility reserves the right to order all inmates employed by the CONTRACTOR to report to another location if necessary to complete such counts. The warden shall make a good faith effort to provide for uninterrupted work time. When possible, the warden will arrange for inmates employed in this program to schedule counseling and other such visits so that they will not interfere with the normal work schedule.

51. **TOOLS AND EQUIPMENT:** Any tools or equipment provided by CONTRACTOR shall remain the responsibility and property of CONTRACTOR and shall be removed by CONTRACTOR at the termination of this AGREEMENT if so requested by the Director of Corrections Industries or designee. An accurate daily tool inventory shall be maintained by CONTRACTOR and subject to review on request of the warden or his designee. A copy of the inventory and all revisions thereto shall be submitted monthly to the deputy warden of the PNM Level II. Any items other than those necessary for canteen operations brought into the institution by CONTRACTOR must have advance approval by the warden or his designee. CONTRACTOR shall report the disappearance of any property to the warden or his designee immediately.

52. **AUDITS: INDUSTRIES** will retain for inspection and audit by the State Auditor's Office all checks, accounts, reports, files and other records relating to the performance of this AGREEMENT for a period of five (5) years after its completion. The original of all such records shall also be available and produced for inspection and audits when required by the State Auditor to verify authenticity of copy.

53. **RULES AND REGULATIONS:** CONTRACTOR shall agree to comply with all prevailing and relevant local, state and federal occupational health and safety codes, regulations and procedures.

54. **POLICIES AND PROCEDURES:** CONTRACTOR and its employees, agents and lessees shall at all times observe all security policies and procedures of the institution and any emergency procedures of the institution and any emergency procedures that the warden shall temporarily stipulate.

55. **FACILITY LOCK.DOWNS:** In the event of a lock down of inmates at the PNM, inmates employed by the canteen operations will be permitted to work if it is deemed feasible by the warden

of the facility. The warden shall make a good faith effort to grant such permission so that the work activity is not unduly disrupted. The decision of the warden will be subject to review by the Secretary of Corrections or her designee. The decision of the Secretary or her designee is final.

56. **NOTIFICATION:** CONTRACTOR will notify the INDUSTRIES of any operations problems pursuant to this AGREEMENT. If either party believes the other party has violated the terms of this AGREEMENT, the party having such belief shall notify the other party, in writing, of the alleged violation. The parties shall then meet and confer on the issue within seven (7) days of receipt of the written notice. Both parties agree to make a good faith effort to resolve any problems resulting from this AGREEMENT as promptly as possible.

57. **BREACH OF CONTRACT:** In the event of a material breach of this AGREEMENT by either party, the non-defaulting party shall give thirty (30) days written notice to the defaulting party to cure the default or breach before this AGREEMENT may be terminated. If the breach or default is such that it cannot reasonably be cured within thirty (30) days (not including monetary defaults), but the defaulting party begins diligent pursuit of a cure upon receipt of written notice, then such additional time as may reasonably be required should be allowed to effect such cure [but not more than sixty (60) days].

IN WITNESS THEREOF, the parties hereto have set their hands and seals

CONTRACTOR Corporation

Date

Alisha Tafoya Lucero, Cabinet Secretary
New Mexico Corrections Department

Date

Robert Leon, Director
Corrections Industries Division

Date

Brianna Bigej, General Counsel, as to legal sufficiency
New Mexico Corrections Department

Date

ATTACHMENT “A” – SCOPE OF WORK

SCOPE OF WORK: Prospective Contractor will partner with the New Mexico Corrections Industries Division to establish and maintain an inmate commissary program on the grounds of the Penitentiary of New Mexico in Santa Fe.

Corrections Industries is seeking a proposal for the following:

A) Provide INDUSTRIES approved commissary products for sale to the inmates at “fair market value” to all of the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the contractor must be prepared to provide commissary products to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

B) Provide delivery of all commissary products to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, contractor must be prepared to deliver all commissary products to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

C) Provide a method for inmates to order commissary products that contains inmate ordering solutions which are efficient and cost effective.

D) Provide a process for the procurement of Holiday Packages purchased by family members up to 5 times per year per inmate to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the contractor must be prepared to provide Holiday Packages to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

E) Be responsible for the interface with CMIS (Corrections Management Inmate System) (As well as be responsible for the interface with any new updated system) to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the contractor must be prepared to provide interface capabilities to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

F) Provide Corrections Industries approved commissary and property for the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, the Contractor must be prepared to provide Corrections Industries approved commissary products for the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

G) Provide consumables/food products for employee benefit and use to the New Mexico state prison facilities in Santa Fe, Los Lunas, Springer, Grants, Roswell, Clayton and Las Cruces. Additionally, respondent must be prepared to provide consumables/food products for employee

benefit and use to the New Mexico private prisons in Grants, Hobbs, Otero County and Santa Rosa.

H) Provide a training certification program for all inmates employed with the commissary program.

I) Provide ACA/Financial documentation in regards to the Commissary Operation to Corrections Industries

J) Provide a solution for the on-site distribution of products at each state and private prison facility in the state of New Mexico in regards to the purchased products for the inmate population.

K.) Provide compensation for approximately 15,000 square feet of warehouse space.

APPENDIX D
COMMISSION RESPONSE FORM
Sample Below

Description	Type	Quantity	Commission per Item

Example Format: Base Period: (xx/xx/xxxx thru xx/xx/xxxx) Price: \$
(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 1: (xx/xx/xxxx thru xx/xx/xxxx) Commission: \$ _____

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 2: (xx/xx/xxxx thru xx/xx/xxxx) Commission: \$ _____

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 3: (xx/xx/xxxx thru xx/xx/xxxx) Commission: \$ _____

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

Option Year 4: (xx/xx/xxxx thru xx/xx/xxxx) Commission: \$ _____

(includes all labor, materials, equipment, transportation, fees and taxes to provide the Services described in Section IV, (as amended by any current RFP amendments for the period specified above)

APPENDIX E

LETTER OF TRANSMITTAL FORM

APPENDIX E
Letter of Transmittal Form
RFP#: 21-770-8000-0001

Contractor 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. Person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____ Title _____
E-Mail Address _____ Telephone Number _____

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

Name _____ Title _____
E-Mail Address _____ Telephone Number _____

4. 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.

Authorized Signature and Date (Must be signed by the person identified in item #2, above.) 2020

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: NM Corrections Department, Procurement Manager Kathleen Branchal Garcia at Kathleen.branchal2@state.nm.us by **March 3, 2020** 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 # 21-770-8000-0001
Inmate Commissary Services**

**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, Corrections Department, Kathleen Branchal Garcia via e-mail at:

Name: Kathleen Branchal Garcia, Procurement Manager
 Address: P.O. Box 27116
 Santa Fe, NM 87502-0116
 Telephone: 505-659-6644
 Email: Kathleen.branchal2@state.nm.us

no later than **November 25, 2020 MST** 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);	

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: