

**STATE PURCHASING DIVISION  
OF THE  
GENERAL SERVICES DEPARTMENT  
AND  
NEW MEXICO CORRECTIONS DEPARTMENT**

**REQUEST FOR PROPOSALS (RFP)**

**FOOD SERVICES**



**RFP#**  
10-00000-20-00036

**RFP Release Date: AUGUST 21, 2020**

**Proposal Due Date: SEPTEMBER 17, 2020**

**ELECTRONIC-ONLY PROPOSAL SUBMISSION**

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# I. INTRODUCTION

## A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of Food Services at all NM Corrections Department Correctional Facilities and Training Academy. New Mexico Corrections Department (NMCD) is looking for a contractor with the proven expertise and experience to perform services described in this document for the provision of Food Services to male and female inmates, correctional officer cadets in training at the Training Academy, and NMCD staff statewide. Multiple award(s) may be made. Number of award(s) will be based on what is determined to be in the best interests of the NMCD, the inmates served, and the State of New Mexico.

## B. BACKGROUND INFORMATION

NMCD is statutorily mandated to provide for the care of all inmates within their custody. NMCD must establish a contract for the provision of food services at each of its 7 state run facilities. New Mexico Corrections Department wishes to also establish a Statewide Price Agreement for Food Services for the benefit of NM county/municipality detention centers and jails as well.

## C. SCOPE OF PROCUREMENT

NMCD's mission: **“Strengthen New Mexico Communities through effective community supervision, creating safe and professional institutional environments and, providing those entrusted to our care with opportunities for positive personal growth and self-development”.**

NMCD currently cares for approximately 6100 inmates in its custody as of the timing of this RFP. Approximately 3460 are placed in state run facilities while approximately 2640 reside in private run facilities. The contractor will be responsible for the delivery of a comprehensive, coordinated, and continuous food services program in accordance with the NMCD mission at the following state run facilities below. NMCD reserves the right to add or delete facilities from the resulting contract. Any additions or deletions will be negotiated with the contractor.

Central NM Correctional Facility, Los Lunas, NM  
Northeast NM Correctional Facility, Clayton, NM  
Penitentiary of NM, Santa Fe, NM  
Roswell Correctional Facility, Hagerman, NM  
Southern NM Correctional Facility, Las Cruces, NM  
Springer Correctional Facility, Springer, NM  
Training Academy, Santa Fe, NM  
Western NM Correctional Facility, Grants, NM

Appendix G identifies inmate counts at each facility as of the date of this RFP, however counts may change based on different factors to include but not limited to release, hospitalizations, and relocations.

The State of New Mexico reserves the right to award multiple Statewide Price Agreements for a total term of eight (8) years. This agreement shall not exceed eight (8) years as set forth in § 13-1-150, NMSA 1978, including extensions and renewals.

This procurement will result in a Statewide Price Agreement that may be utilized by all State of New Mexico agencies, commissions, institutions, political subdivisions and local bodies allowed by law. It is the responsibility of each Procuring Agency to enter into their own contract between the Agency and the Awarded Contractor. All parties must adhere to the terms and conditions set for in this Request for Proposals and the resulting Statewide Price Agreement.

#### **D. PROCUREMENT MANAGER**

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, Chief Procurement Officer, Procurement Manager  
Telephone: (505) 827-8673  
Email: Kathleen.Branchal2@state.nm.us

1. **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 SPD.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.13.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, **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.** Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

#### **E. PROPOSAL SUBMISSION**

*Submissions of all proposals must be accomplished via SPD's eProNM electronic procurement system. Refer to Section III.B.1 for instructions.*

## F. DEFINITION OF TERMINOLOGY

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

1. “**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. “**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.
3. “**Award**” means the final execution of the contract document.
4. “**Business Hours**” means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
5. “**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
6. “**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 §§57-3-A-1 through 57-3A-7, NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
7. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
8. “**Contractor**” means any business having a contract with a state agency or local public body.
9. “**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.
10. “**Desirable**” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
11. “**Electronic Submission**” means a successful submittal of Offeror’s proposal in the eProNM system, in such cases where eProNM submissions are accepted.
12. “**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.

13. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
14. “**Evaluation Committee Report**” means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
15. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
16. “**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.
17. “**Hourly Rate**” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
18. “**IT**” means Information Technology.
19. “**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 may result in the rejection of the Offeror’s proposal.
20. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
21. “**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.
22. “**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.
23. “**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.
24. “**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.



25. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
26. **“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.
27. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
28. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
29. **“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.
30. **“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.
31. **“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.
32. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.
33. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
34. **“State (the State)”** means the State of New Mexico.
35. **“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.

36. “**State Purchasing Agent**” means the Director of the Purchasing Division of the General Services Department.
37. “**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.)
38. “**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.
39. “**Written**” means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

## **G. PROCUREMENT LIBRARY**

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

Electronic version of RFP, Questions & Answers, RFP Amendments, etc.

<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

Other relevant links:

<https://cd.nm.gov/nmcd-prison-facilities/>

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	SPD	August 21, 2020
2. Acknowledgement of Receipt Form	Potential Offerors	August 26, 2020
3. Pre-Proposal Conference	Agency	None
4. Deadline to submit Written Questions	Potential Offerors	August 31, 2020
5. Response to Written Questions	Procurement Manager	September 8, 2020
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	<b>September 17, 2020</b>
7.* Proposal Evaluation	Evaluation Committee	September 21-25, 2020
8.* Selection of Finalists	Evaluation Committee	September 29, 2020
9.* Best and Final Offers	Finalist Offerors	N/A
10.* Oral Presentations	Finalist Offerors	October 6, 2020
11.* Finalize Contractual Agreements	Agency/Finalist Offerors	October 15, 2020
12.* Contract Awards	Agency/ Finalist Offerors	October 23, 2020
13.* Protest Deadline	SPD	15 days from notification of non-award

\*Dates indicated in Events 7 through 13 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue RFP

This RFP is being issued on behalf of the **New Mexico State Corrections Department** on the date indicated in Section II.A, Sequence of Events.

## 2. Acknowledgement of Receipt Form

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the SPD buyer, Yuliasuti Wulandari, Yuliasuti.Wulandari@state.nm.us, to have their organization placed on the procurement Distribution List. The form must be returned to the SPD Buyer by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

## 3. Pre-Proposal Conference

There is no pre-proposal conference for this RFP.

## 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.** MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.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 the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

An electronic version of the Questions and Answers will be posted to:

<https://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>

## 6. Submission of Proposal

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

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **3:00 PM** MST/MDT ON **September 17, 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 submitted electronically through SPD's eProNM electronic procurement system. Refer to Section III.B.1 for instructions.*** Proposals submitted by facsimile, or other electronic means other than through the SPD electronic e-procurement system, will not be accepted. It is the responsibility of the Offeror to ensure to **complete** supplier registration in the State Purchasing Division's electronic procurement system **prior** to submission.

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

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time. Finalists will be comprised of the Offerors receiving the highest cumulative scores in the following Sections: Section IV.B.1 Organizational Experience, Section IV.B.3 Organizational References, and Section IV.B.4 Mandatory Specifications.

## **9. Oral Presentations**

Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If oral presentations are held, Finalist Offerors may be required to make their presentations through electronic means (GoToMeeting, Zoom, etc). The Agency will provide Finalist Offerors with applicable details. Whether or not Oral Presentations will be held is at the discretion of the Evaluation Committee and SPD.

## **10. Finalize Contractual Agreements**

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **11. Contract Awards**

Upon receipt of the signed contractual agreement, the Agency Procurement office will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate Department and State approval.

## **12. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, 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 notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Mark Hayden, State Purchasing Agent  
Mark.Hayden@state.nm.us

**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 these Conditions Governing the Procurement, Section II.C, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

### **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 not 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. **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, 1.4.1.5 & 1.4.1.36 NMAC.

## 7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm until such time that a contract has been fully executed.

## 8. Disclosure of Proposal Contents

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

- a. ***Proprietary and Confidential information is restricted to:***
  1. confidential financial information concerning the Offeror's organization; and
  2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Sections III.B.1.a.i and III.B.2.a.i, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

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

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. 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 proprietary or confidential information.

## 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 affected 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 Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

## **15. Contract Terms and Conditions**

The contract between a Procuring Agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft 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 Draft 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 Draft 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 Draft 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. 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 §13-1-83 and §13-1-85, NMSA 1978.

## **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.20. 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, §§13-1-28 through 13-1-199, NMSA 1978, imposes civil, and 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. If the RFP is cancelled, all responses received shall be destroyed by the Agency or SPD unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

## **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://www.generalservices.state.nm.us/statepurchasing/active-procurements.aspx>  
or

<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico&tap=PHX>

## **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://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 Offeror's disqualification.**

### **30. Letter of Transmittal**

Offeror's proposal must be accompanied by an **unaltered** Letter of Transmittal Form (APPENDIX E), which must be **completed** and **signed** by the individual authorized to contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, Does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only required if the responses differs from the individual identified in A*);
3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award;
4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and
5. Be signed and dated by the person identified in #2 above; attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to respond to ALL items as indicated above, will result in Offeror's disqualification.**

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

#### **A. New Mexico Business Preference**

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

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

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

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

**The New Mexico Preferences shall not apply if 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. ELECTRONIC SUBMISSION ONLY Responses (SPD's E-procurement System eProNM)

Proposals in response to this RFP must be submitted through State Purchasing's electronic procurement system ONLY, the Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* Separate the proposals as described below into separate electronic files for submission.

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal **must** be submitted in separate uploads as indicated below in this section, and **must** be prominently identified as "Technical Proposal," or "Cost Proposal," on the front page of each upload

- a) **Technical Proposals** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* The Technical Proposals **SHALL NOT** contain any cost information.
  - i. **Confidential Information**: If Offeror's proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files**:
    - One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section I.F.38) versions for evaluation purposes; and
    - One (1) **redacted** (def. Section I.F.27) ELECTRONIC. for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal. Redacted versions **must** be clearly marked as "REDACTED" or "CONFIDENTIAL" on the first page of the electronic file;



- b) **Cost Proposals** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit*

For technical support issues contact (505) 827-0467 or (505) 827-0472 or [GSD.SPDeProcurement@state.nm.us](mailto:GSD.SPDeProcurement@state.nm.us)

**The ELECTRONIC proposal submission must be fully uploaded in SPD's eProNM system by the submission deadline in Section II.B.6.**

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

## **C. PROPOSAL FORMAT**

All proposals must be submitted as follows:

Organization of files/envelopes for 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 must 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 – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror's Additional Terms and Conditions (from Section II.C.16 )
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Binder 2**)
  1. Organizational Experience
  2. Organizational References
  3. Oral Presentation (if applicable)
  4. Mandatory Specification
  5. Financial Stability –(Financial information considered confidential, as defined in Section I.E. and detailed in Section II.C.8, should be placed in the **Confidential Information** file, per Section II.B.1.a.i or Section II.B.2.a.i, as applicable)

- 6. New Mexico Preferences (if applicable)
- H. Other Supporting Material (if applicable)

**Cost Proposal:**

- 1. Completed Cost Response Form (APPENDIX D)

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. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

A Proposal Summary may be included in Offeror's Technical Proposal, 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. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

## **IV. SPECIFICATIONS**

### **A. DETAILED SCOPE OF WORK**

#### **I. NEW MEXICO CORRECTIONS DEPARTMENT RESPONSIBILITIES**

The New Mexico Corrections Department, (hereinafter "NMCD"), is responsible for the following:

- A. Provide required access to the facility and parking designated locations for Contractor's employees;
- B. Furnish all utilities to the Contractor for its operation, as judged by NMCD to be reasonably needed and necessary;
- C. Permit the use of all existing capital equipment to operate the food services program with the exception of vehicles;
- D. Furnish food storage space, refrigeration, food service facilities and equipment, and other auxiliary facilities required by the Contractor to provide the services specified;
- E. Consider equipment acquisition recommendations that the successful Contractor deems necessary for complete and efficient service;
- F. Provide for removal of all refuse, although the Contractor will be responsible for proper storage and placement of said refuse until removal; and
- G. Provide all necessary equipment repairs and maintenance, to include all building maintenance services that are the result of "normal wear and tear".

#### **II. DETAILED SCOPE OF WORK**

The scope of work shall consist of operating a statewide food service program in accordance with New Mexico Environment Department standards, American Correctional Association Standards (fifth edition, as revised and/or supplemented) pertaining to food service and safety, and NMCD Policies and Procedures.

##### **A. Personnel and Mandatory Staffing**

Contractor agrees to provide all coordinating management, supervisors, training, and technical personnel required to meet the requirements set out in the Contract or as amended by mutual agreement of both parties and in accordance with the terms of this agreement. The Contractor will provide the following mandatory positions, at a minimum. To measure the adequacy of Mandatory Staffing levels shown below; and

within 90 days after Contract execution, NMCD and the Contractor will interactively develop an agreed to methodology to derive and compare contractual hours and actual hours worked, the latter inclusive of overtime hours.

The Contractor must have a qualified nutritionist or dietician who shall provide written evidence to assure that dietary allowances have been reviewed at least annually to ensure that diets served at each facility meets the nationally recommended allowances for basic nutrition.

Contractor shall meet the Mandatory Staffing hereby identified:

**Statewide Managers** (2)

One District Manager and one Operations Support Manager, one of whom must reside within 75 miles of the Central New Mexico Correctional Facility.

**Food Services Manager**

Central NM Correctional Facility	(1)
Northeast NM Correctional Facility	(1)
Penitentiary of NM	(1)
Roswell Correctional Facility	(1)
Southern NM Correctional Facility	(1)
Springer Correctional Facility	(1)
Training Academy	(1)
<u>Western NM Correctional Facility</u>	<u>(1)</u>
TOTAL	(8)

**Assistant Food Services Manager**

Central NM Correctional Facility	(1)
Penitentiary of NM	(1)
Roswell Correctional Facility	(1)
Southern NM Correctional Facility	(1)
Springer Correctional Facility	(1)
Training Academy	(1)
<u>Western NM Correctional Facility</u>	<u>(1)</u>
TOTAL	(7)

**Food Services Worker**

Central NM Correctional Facility	(9)
Central NM Correctional Facility Bakery	(2)
Northeast NM Correctional Facility	(5)

Penitentiary of NM	(9)
Roswell Correctional Facility	(3)
Southern NM Correctional Facility	(6)
Springer Correctional Facility	(3)
Training Academy	(1)
<u>Western NM Correctional Facility</u>	<u>(3)</u>
TOTAL	(41)
<b>Grand Total Mandatory</b>	<b>58</b>

**B. Personnel and Mandatory Staffing Requirements**

1. The Contractor shall provide sufficient staff to supervise inmates working in the food services area. Inmate job assignments include but are not limited to the preparation and serving of meals, receiving materials, and sanitation. Each facility based upon their staffing capability, shall make every reasonable effort to provide at least one correctional officer assigned to oversee the safety and security of the food service operation in areas in need of enhanced security.
2. The Contractor shall recruit, train, and maintain throughout the contract term a manager and chief cook.
3. The Contractor will provide dietetic, purchasing, and personnel guidance and consultation. Contractor shall ensure that Contractor's employees maintain compliance with all Federal, State, and Local health rules and regulations throughout the term of the agreement.
4. Employees must not have been convicted of a felony, and must submit any arrest record information to the Director. All employees of the Contractor must clear a background check prior to working in any NMCD Facility. This includes any employee that is transferring from one NMCD facility to another. A written clearance from the previous facility must also be obtained prior to the employee starting and submit to facility HR Manager.
5. Contractor agrees that the Statewide Managers at each prison will have at least two (2) years of experience in providing dietary food services in prisons and/or jails (military experience is accepted as correctional experience).
6. Contractor agrees to maintain a management staff on duty during operating hours at all facilities and will provide administrative offices, dietetic, purchasing, and personnel guidance and consultation.
7. The Agency will make every effort to review and approve qualified

contractor applicants, in particular those within the contractor's management staff. As stated in paragraph 12, approval of replacement personnel shall not be unreasonably withheld.

8. Contractor shall ensure that Contractor's employees maintain compliance with all Federal, State, and Local health rules and regulations throughout the term of the agreement.

9. Contractor shall maintain a position number and a written job description for each member of the Contractor's staff, which clearly describes assigned duties and responsibilities. Contractor's employees must be able to fluently and clearly speak, read and write English, provided that such requirement does not conflict with local, state or federal law.

10. Contractor shall be solely responsible for all personnel costs including of its employees under this Agreement salaries, taxes, and fringe benefits.

11. All personnel employed by the Contractor shall comply with all lawful policies and procedures that are implemented in each facility. All personnel applicants shall be required to pass a background investigation conducted by NMCD as a prerequisite for initial and/or continued employment. NMCD shall review all applicants and reserves the right to deny access to its facilities by any of the Contractor's employees for security or other reasons.

12. All Contractor personnel assigned to a facility shall be required to undergo and pass a drug urinalysis test as both a pre-requisite for initial and/or continued employment with the Contractor, and all personnel will be randomly drug tested at least annually.

13. The Contractor will consult with the NMCD Director of Adult Prisons and/or Designate, prior to replacing or filling the following positions: Statewide Food Service Manager or Statewide Assistant Food Service Manager. The Contractor will consult with the affected facility Warden prior to replacing or filling the facility Food Service Manager position. The Director of Adult Prisons and/or Designate and the facility Warden have the authority to approve or disapprove the respective positions specified above. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure that the replacement personnel are productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

14. The Department shall retain the right to request removal of any of the Contractor's personnel at any time for any lawful reason.

15. The Contractor shall ensure certification of all employees in a food safety program approved by NMCD within thirty (30) days of employment with the Contractor. Proof of certification shall be provided to NMCD.
16. Provision of ongoing training for the proper operation and use of all food service equipment.
17. Inclusion of other in-service training in sanitation techniques and procedures, emergency feeding, dish washing, food borne illness, safety, and other training needs as they are assessed and deemed necessary by NMCD or the Contractor
18. Maintenance of written documentation of training required by this Section B and any other training provided, which must be permanently maintained in each employee's personnel file.

### **C. Employee Training and Development**

1. Contractor will be solely responsible for providing and maintaining the applicable training films, slides, literature, daily work schedules, standard operating procedures, and training manuals used in training Food Service Stewards. These materials shall at all times remain the property of the Contractor. The Contractor shall require all its personnel to complete a one (1) week, forty (40) hour, pre-service orientation training period that shall be completed within the first two (2) months of employment.
2. All employees must be certified in a food safety program approved by NMCD within thirty (30) days of employment with the Contractor. Proof of certification shall be provided to NMCD and the facility training manager.
3. The Contractor shall provide ongoing training for the proper operation and use of all food service equipment.
4. Other in-service training shall be provided by the Contractor to include: sanitation techniques and procedures, emergency feeding, dish washing, food borne illness, safety, and other training needs as they are assessed and deemed necessary by NMCD or the Contractor.
5. The Contractor will maintain written documentation of training required by this section C and any other training provided, which must be permanently maintained in each employee's personnel file.
6. Contractor will be solely responsible for providing and maintaining the applicable training films, slides, literature, daily work schedules, standard

operating procedures, and training manuals used in training Food Service Stewards. These materials shall at all times remain the property of the Contractor.

**D. Authorized Food Service Operations**

Contractor shall not be authorized to use the NMCD facilities or to conduct or prepare any food items for any other food service or purpose not specified in the contract, unless otherwise specifically approved by the Agency in writing.

**E. Equipment Maintenance and Use**

1. The Contractor will conduct and document inspections of food service equipment owned by NMCD. The Contractor shall notify appropriate facilities personnel, in writing, of any equipment malfunctions or equipment in need of replacement.

2. The Contractor will develop and implement a safety and instructional program to ensure that all food service stewards and inmates are familiar with proper operating procedures/conditions of food service equipment. The Contractor will provide a vehicle for those locations that provide satellite deliveries to units and provide proof of insurance. Contractor will be responsible for any maintenance, repairs and fuel cost.

3. Repair or replacement of equipment necessitated by normal wear and tear will be accomplished by the facilities. The Contractor is responsible for repair and replacement of equipment that is rendered un-serviceable through the abuse or negligence of persons employed or supervised by the Contractor.

**F. Computerized System**

The Contractor shall provide computer hardware and software to implement and maintain systems for inmate menu assessments, food production and delivery controls, inventory management, billing, management reports, payroll and labor reports and other managerial functions. Contractor shall provide and consistently apply at all facilities, a method of technology that will accurately track the number of meals served, for true accountability of food cost and billing accuracy.

**G. Security**

1. The Contractor staff shall comply with all lawful policies and procedures of NMCD and the facilities. Contractor staff vehicles shall be subject to search while on facility grounds. Published rules and regulations shall be available from NMCD staff to the Contractor.
2. The facilities shall provide identification badges for all Contractor personnel. The Contractor is responsible for paying the cost of all lost badges for persons under their employ.



3. The Contractor staff shall not engage in any illegal, prohibited, or other activities with inmates, other contractor staff, or NMCD staff which could endanger or disrupt the orderly operation of the facilities.
4. During the duration of the contract period, the facilities shall provide security measures for the Contractor's employees comparable to that provided for NMCD employees. All employees of the Contractor must clear a background check prior to working in any NMCD Facility. This includes any employee that is transferring from one NMCD facility to another. A written clearance from the previous facility must also be obtained prior to the employee starting and submitted to the facility HR Manager.
5. The facilities reserve the right to restrict access to the facilities and require the immediate removal of any person(s) without prior notification for security reasons.

#### **H. Food Safety Compliance**

1. The Contractor shall ensure that Contractor's employees maintain compliance with all Federal, State, and Local health rules and regulations throughout the term of the contract.
2. All personnel employed by the Contractor shall have a medical statement certifying that they are free of any contagious form of tuberculosis, hepatitis, or any other infectious disease. T.B. skin tests shall be administered annually by the Contractor on all personnel under their employ except those employees with documented past positive T.B. tests. A chest x-ray is required for personnel with positive tests at the time of hiring and for all personnel who convert their tests to positive.
3. Contractor personnel shall be removed temporarily from work if they develop contagious respiratory, gastrointestinal, or skin diseases, and shall not return to work until medically cleared.

#### **I. Compliance with Standards**

1. The Contractor shall be responsible for ensuring that the food services kitchen and dining areas meet all statutory and regulatory specifications and requirements of the New Mexico Environment Department, Environmental Improvement Division. Upon inspection, if authorized health or food inspectors find any violations by the Contractor of the specifications and requirements of the statutes and regulations of the New Mexico Environment Department Environmental Improvement Division, the Contractor will have twenty-four (24) hours to bring the food services facility into compliance, or a reasonable amount of time where the required improvement cannot be completed within 24 hours. Contractor shall be responsible for costs of providing cadet meals at a local restaurant at any time such violations affect meal

preparation or serving. Failure to comply with these requirements may result in termination of the food services contract and no payment will be made nor will any amount be owed to the Contractor for any period of time in which the facility is out of compliance.

2. American Correctional Association: The Contractor shall be responsible for compliance with ACA Standards for Correctional Training Academies (First Edition and as revised or supplemented), and will participate with NMCD in the accreditation, or reaccreditation process and ensure the food service facility operates in accordance with ACA Standards. The contractor shall ensure that menu evaluations are conducted at least quarterly by institution food service supervisory staff to verify adherence to the established basic daily servings. Dietary allowances, as adjusted for age, sex, and activity, should meet or exceed the recommended dietary allowances published by the National Academy of Sciences.

**J. Inmate Labor**

1. The Facilities shall provide inmates for assistance in food preparation, serving, sanitation, and other food services activities at the following locations:

<u>New Mexico Corrections Department Inmate Labor</u>	
Central NM Correctional Facility	96
Northeast NM Correctional Facility	40
Penitentiary of NM	50
Roswell Correctional Facility	25
Southern NM Correctional Facility	40
Southern NM Correctional Facility	
Minimum Restrict	25
Springer Correctional Facility	25
Training Academy	6
<u>Western NM Correctional Facility</u>	<u>40</u>
TOTAL	347

2. Inmate job assignments include, but are not limited to: food preparation, serving of meals, receiving materials, and sanitation duties. The Contractor will provide job titles and job descriptions for all inmate job positions.
3. All salaries for inmate labor shall be paid directly by NMCD. Salaries shall be based on information provided by the Contractor in accordance with established inmate payroll policies. Pay will be for a forty (40) hour work week. Any overtime work performed by inmates must be requested by the Contractor and will be paid by the Contractor at the same rate of pay for regular hours. Inmates are generally not available to work during lockdowns.

4. The Contractor is responsible for conducting a documented health and sanitation check on all inmate food service workers reporting to work. Inmate food service workers shall be temporarily removed from work if they have open wounds on the skin or if they appear to have respiratory, gastrointestinal, or skin diseases. Such inmates shall not return to work until medically cleared. Inmates, who report to work with dirty hands, fingernails, clothes, or the like, shall not be permitted to work.
5. Each prison shall be responsible for providing clean food service uniforms for inmates assigned to food service, and such uniforms will be in good condition.
6. A comprehensive inmate culinary arts training program in culinary arts and food service management will be developed and implemented by the Contractor within 120 days of the award of this contract. The curriculum and certification is subject to the approval of NMCD Director of Recidivism Reduction and the Director of Adult Prisons.

The Training Program will provide for the following:

- a. Training will be made available to at least 25% of the total number of inmates employed by the Contractor at each facility.
- b. Documentation for inmate participants demonstrating progression through the curriculum and mastery of individual program components.
- c. Certificate of completion for successful participants.
- d. The Contractor shall give first employment preference to NMCD inmates who have successfully completed the program and who parole or discharge to the community, to the extent that Contractor has other food service contracts within the state of New Mexico with positions available where such inmates could lawfully and contractually work. Such former inmates may not be hired by the Contractor to work in any correctional facility.

**K. Food Inventory, Supplies, and Purchases**

1. At the termination of the contract, the outgoing Contractor agrees to sell the "ending inventory" of expendable supplies and food products at cost.
2. The Contractor shall maintain an adequate inventory of expendable supplies including, but not limited to: serving items, cooking items, disposable gloves, paper goods, trash can liners, plastic ware, cleaning supplies and detergent and chemicals used in washing of cooking, serving and eating utensils (dishware, utensils, pots, etc.) Generally, non-toxic substitutes for items such as bleach and

oven cleaners will be used. Caustic and toxic substances will be handled in accordance with ACA Standards. The contractor shall provide an option of new technology for control of inventory accountability and cost.

3. The Contractor is responsible for purchasing the correct food items, supplies, and other merchandise. Such items shall be ordered and received in the required quantity and quality and the Contractor will ensure that deliveries are made timely to adequately meet the needs of each facility.
4. The Contractor will ensure that deliveries are made to correspond with the appropriate schedules and security procedures of the institutions. The facilities shall require advance notification of all deliveries.
5. Food inventories purchased are the property of the Contractor and the Contractor is responsible for loss, damage, spoilage or theft thereof.
6. The Contractor shall be responsible for the proper handling, storage, and refrigeration of food items.
7. All foods items purchased by the Contractor for the food production are subject to inspection and approval by each respective Warden, Duty Officer, Food Contractor Monitor, and the state dietician.
8. The Contractor agrees that preference shall be given to local suppliers whenever practicable.
9. The Contractor shall maintain a two (2) week inventory in stock of nonperishable food. All inventories shall be rotated regularly and the Contractor shall ensure food items are not served after the suppliers or manufacturers expiration date. NMCD, will not pay for spoilage, damage, obsolescence, or theft of food items. Contractor is responsible for securing freezer/refrigeration truck in the event of an emergency utility failure. Storage will be made available at the NMCD facilities warehouses for the Contractors inventory.
10. The Contractor shall be responsible for providing medium weight plastic tableware, spoons, and forks, for use in both the inmate and staff dining halls.
11. The Contractor shall provide all serving utensils, such as but NOT limited to ladles, spatulas, etc. The Department shall supply trays, tumblers, and bowls. The Contractor shall supply all required Styrofoam products such as foam- hinged trays, plates, bowls and cups, etc. The Contractor shall be responsible for the inventory of these items and ensure proper handling.
12. The Contractor shall supply all paper products, household items, and cleaning supplies. Given that the Facility has provided the Contractor with adequate

storage areas, the Contractor shall be responsible for proper storage control of those items to prevent any theft, damage, or other loss. All office supplies necessary for the management of the operation shall be provided by the Contractor, except those forms required by NMCD for compliance with established regulations.

13. The Contractor shall reimburse NMCD at five cents (\$0.05) per page for photocopies reproduced on Department copiers. Food Service equipment and trays damaged through the intentional or negligent acts of the Contractor or the Contractor's employees shall be the Contractor's responsibility. Contractor is not responsible for reasonable wear and tear. The Contractor shall be responsible for the purchasing and cleaning of linen and uniforms for Contractor staff in the dietary operation. Contractor personnel will be required to wear distinctive food service uniforms that are easily distinguishable from the inmate kitchen labor force.
14. Contractor shall provide written input to the facility Warden on the replacement of food service equipment, kitchen supplies or both. The Contractor will offer Correctional Officer meals, salad bar, and make available a special meal for purchase by both staff and inmates at an additional cost.\
15. The Contractor shall be required to have three (3) day pulls available in order to verify the proper ingredients and food are in compliance with said menu.

#### **L. Food Purchase Specifications**

The specifications establish a minimum quality acceptable to NMCD in the procurement of raw foods. The Contractor shall furnish NMCD with a complete list of the grade and quality of raw food to be used in the production of meals, snacks, and other nourishment.

##### New Mexico Corrections Department Food Purchase Specifications

- Canned fruits -fancy and choice grades/water packed
- Dairy products -Grade A fresh milk 2% fat or lower
- Eggs -USDA Grade AA (large)
- Frozen foods -Grade A
- Fresh produce and fruits - #1 quality
- Canned vegetables – choice and extra standard grades
- Meats, poultry, and fish
  - Beef-USDA choice no boneless lean beef trimmings (Pink Slime)
  - Veal - USDA choice
  - Lamb -USDA choice
  - Poultry-USDA choice
- Ground beef and ground turkey - USDA utility or better with fat content

between 18 and 25 percent (18%- 25%) no boneless lean beef trimmings (Pink Slime).

- Textured vegetable soy products will be allowed but must be approved by the Director of Adult Prisons for the initial menu and on an advanced written approval basis thereafter.
- Imitation cheese products may be used in meal preparation; however, they may not be used as an entree. Low fat cheese is to be used for entrees, such as hot or cold sandwiches; toppings; and garnishes.
- The Contractor shall ensure that all food preparation will be performed with minimum or no quantity of salt and saturated fat. No animal fats such as lard will be used.

**M. Meal Preparation Locations**

The following meal preparation areas will be used:

<u>Facility</u>	<u>Kitchen Location</u>	<u>Locations Served</u>
Central NM Main Unit	Central Main unit MHTC	Central Main Unit (RDC, GP, etc.) MB.TC, LTCU
Central NM Min. Restrict		Central NM Min. Restrict
Central NM Minimum	Central NM Minimum	Central NM Minimum
Northeast NM Correctional Facility	NENMCF	NENMCF Dining
Penitentiary of NM	PNM	PNM Minimum Restrict Unit
Roswell Correctional Center	RCC	RCC Dining/DWI
SNMCF JRS Unit	SNMCF JRS Unit	SNMCF JRS Unit
SNMCF PO Unit	SNMCF PO Unit	SNMCF PO Unit
Springer Correctional Center	SCC	SCC Dining
Training Academy	Training Academy (TA)	TA Dining Hall
Western NMCF	WNMCF	B-dining

1. The Contractor shall provide meals at each facility in accordance with established operating schedules and conditions.
2. Inmates shall be served in locations to be designated by NMCD, which locations may be changed at the discretion of NMCD. Generally, Level I and Level II inmates are served in a dining hall; Level III and Level IV inmates are served in the pod common area; and, Level V and VI inmates are served in their cells. The Contractor shall provide meal service as determined by NMCD for inmates located in the segregation units, long term care unit (infirmary), inmates confined to living units, prison industries (sack lunches), off-site work details, and other locations requested by the facility wardens.
3. Meals served at satellite locations will separate hot and cold food and the delivery method will ensure that hot and cold food temperatures are met at the point-of-service. Styrofoam products and plastic ware will be furnished at the expense of the Contractor.

4. Meal service will be provided to employees in the employee dining facilities. At each prison facility, correctional officer supervisors, transportation officers and correctional officers who work a double shift are provided a meal by NMCD at no cost to the employee. Other staff may obtain meals by purchasing a meal ticket. Contractors are required to provide the meals and the Agency will pay for each meal at the same price as the inmate per meal rate.
5. The Contractor is responsible for determining the appropriate number of meals to be prepared and served. The Contractor shall provide sufficient meals for all inmates, NMCD employees, contract staff, and approved visitors who wish to eat according to the approved menu schedule.

**N. Menus**

The Contractor will develop a 5-week cycle menu that meets the requirements contained in the following menu specifications. The menu shall identify: (i) the cooked weight serving size portion; (ii) the cooked weight of meat used in combination recipes; and, (iii) use of any item that contains textured vegetable soy protein. The Contractor shall provide a complete nutrient analysis and cooked weight serving size portion for every menu item.

The Contractor shall prepare and serve well balanced meals which consist of a minimum of 3,000 calories per day. Protein must provide an average of 15% of total calories; carbohydrates must provide an average of 55% of total calories; and fat must provide an average of 30% of total calories with no more than 10% of calories from saturated fat. The Contractor will use Recommended Daily Allowances (RDA), as determined by the Food and Nutrition Board and the National Academy of Sciences, National Research Council, to provide a generally recognized guideline of nutritional standards. The RDA's Standards for all major vitamins and minerals must be met. Sodium must be limited to an average of 5 grams per day and cholesterol must be limited to an average of 500 mg per day or less. Typically "spicy" foods (e.g., Frito pie, chili stew, enchiladas, etc.) must be prepared with mild seasonings. Additional seasoning (e.g., peppers or salsa) shall be made available in the dining hall.

The Contractor shall prepare meals to include foods consistent with the ethnic population of the facility. Flavor, texture, varieties and color combinations must also be considered. To decrease monotony, the 5-week cycle menu will be reviewed and revised by the Contractor at least annually and signed by facility Warden. Unpopular menu items will be replaced by other more acceptable food items. Two menus (spring and summer) and (fall and winter) which reflect availability of seasonal foods, traditional holiday menus, and heavier foods during the colder weather months and light, cool, and crisp foods during the warmer weather months shall be provided to Warden by March 1<sup>st</sup> and September 1<sup>st</sup>.

- a. Breakfast: The Contractor shall prepare and serve a balanced breakfast each day.

Breakfast shall consist of such foods as fruit or juice, cereal, eggs, toast or bread substitute and margarine. A beef or turkey product shall be served at breakfast at least four (4) times per week. Each breakfast meal shall include 8 ounces of milk and coffee in accordance with viand submitted menu. In addition, four (4) ounces of fruit drink in accordance with viand submitted menu shall be served four times per week. Water shall be offered at all meals. The food shall be rotated to provide variety in sufficient quality and quantity to satisfy the needs of designated persons taking this meal.

- b. Lunch/Dinner Meal: The Contractor shall prepare and serve balanced meals each day. The lunch and dinner meals shall consist of an entree, one (1) cooked vegetables or vegetable substitute, dessert, bread or bread alternative, margarine when appropriate, choice of available beverage, and salad. If tossed salad is served, it must contain lettuce and three additional raw vegetables such as tomato, celery, carrots or cabbage and include an appropriate salad dressing. At least one (1) of the salads being served during the day (either the lunch or dinner meal) shall be of a fresh fruit or fresh vegetable variety. Every lunch and dinner entree shall use beef, poultry or fish as the protein component. The entree will consist of 3-4 ounces (cooked weight) of meat, fresh poultry, or fish; or 8 ounces (cooked volume) of stew or casserole containing meat. Each lunch and dinner meal shall include a beverage in accordance with viand submitted menu. Water shall be offered at all meals.
- c. Miscellaneous: The Contractor shall provide two (2) desserts per day, one (1) at lunch, and one (1) at dinner. Either whole fresh fruit or sliced fresh fruit (4-6 ounce portion) shall be served not less than three (3) times per week and may be served for dessert.

No pork, pork product, or pork byproduct will be used as a menu item or in the preparation of any menu item.

Future changes to the menu shall be certified by a registered dietitian along with a complete nutritional analysis and cooked weight portion size for each item on the specified menu for each meal as required in this paragraph N (a-c). The menu submitted, once reviewed and approved by NMCD, shall be instituted by the Contractor upon contract start date. All requests for changes in the approved menu shall be submitted to the Adult Prisons Division Director who shall make the final decision concerning the appropriateness of the menu. The Director of Adult Prisons may require the serving of a special meal, not on the cycle menu, one time per calendar quarter at each facility, such meal to be implemented in recognition of good behavior or special circumstances. The menu for the special meal will be determined by NMCD, with the assistance and guidance of Contractor to ensure that such meal is generally within Contractor's pricing parameters

The Contractor is required to provide for **religious diets**. Religious diets will be provided to inmates who have been approved by **NMCD**, in accordance with policy, to receive a religious diet including a kosher meal. The Contractor will provide a heart healthy menu option and a female specific menu of fewer calories.



Where combination foods are on the menu, the Contractor shall make available the recipe providing the list of ingredients and their quantities, the number of servings, and the size of each serving with the five (5) week menu cycle. Holiday and special event menus shall be provided. At a minimum, the Contractor shall provide special dinners at all facilities on the following holidays:

**New Mexico Corrections Department Holiday/Special Event Calendar**

Martin Luther King Day

Memorial Day

Labor Day

Christmas Day

Spring Holiday

Thanksgiving Day

Superbowl Sunday

a. For the traditional fall or winter holidays (i.e. Thanksgiving, Christmas and Martin Luther King Day), two (2) entrees shall be provided to each inmate to consist of either turkey or roast beef, excluding processed products. The ethnic population requirements and holiday requirements apply to food prepared and served for all.

b. For the spring or summer holidays (i.e. Spring Holiday, Memorial Day, and Labor Day), the menu shall consist of two (2) entrees for each inmate to consist of either barbecue beef, or barbecue chicken. For each holiday, each inmate shall receive at least four (4) ounces of each entree served to consist of a total weight of (8) ounces for the meal. Processed meat products may not be used in whole or in part to comply with the meat entree requirements.

c. For Super Bowl Sunday dinner, the Contractor shall provide a sack lunch which consists of the following: two sandwich rolls (hoagie bun, submarine bun, or the like); six (6) ounces of sliced roast beef and/or sliced roast turkey lunch meat; two (2) ounces of sliced low fat cheese; lettuce, sliced tomato, sliced onion, pickles, jalapeno, mayonnaise, and mustard; two (2) ounces of commercially packaged potato chips; 1 cup of potato salad; one (1) commercially packaged candy bar of at least one-and-a-half (1.5) ounces; a 12-ounce can/plastic bottle of carbonated soda.

**Sack Lunches:**

The Contractor shall prepare and date all sack lunches as may be requested. The sack lunch shall consist of two (2) sandwiches containing a minimum of 1 1/2 ounces of protein complement per sandwich, a piece of fruit, a dessert, one (1) commercially package of potato chips or other similar item, and a beverage. A larger sack lunch for outside work details containing additional food items may be prepared and charged for at 1 1/2 times the normal meal cost at the discretion of the Facility Warden. The Contractor shall vary the type of meat and other items in the sandwiches on a strict rotation basis to avoid repetition. The Contractor shall provide a five-week sack lunch menu. The menus shall have a variety of meals and will be provided to Warden upon request.

## **Lockdown Menus**

The Contractor shall provide actual menus for the first three (3) days of a facility lockdown. If the lockdown continues beyond three (3) days, the Contractor shall submit additional menus for the designated facility. The Contractor shall maintain a three (3) day inventory for the lockdown menu. All menus shall be reviewed and certified as to nutritional adequacy by a registered dietitian provided by the Contractor, including the nutrient analysis and portion size for all items as served. The Contractor shall cite references used to determine nutritional value.

## **O. Therapeutics Diets**

1. The 5-week cycle menu shall generally meet the dietary requirements for low-fat and low-sodium diets. With diet counseling for inmates from the medical staff and inmate avoidance of some menu items, this same general menu will also meet the needs for low cholesterol, bland and diabetic diets.
2. The Contractor is responsible for developing a diet manual for the most commonly prescribed medical diets, such as soft, mechanical soft, liquid, pureed, low protein, and renal. The Contractor will prepare and serve these and any other prescribed therapeutic diets, at regular meals and snacks ordered by the medical staff. The Contractor's dietician must be consulted for any medical diets that are not clearly addressed in the diet manual. The diet manual will be reviewed and approved by the NMCD.
3. Meals and snacks for medical diets will be prepared and served in compliance with treating Clinicians' orders, the Standard of Care for medical diets, and the approved Diet Manual. Where possible, the food items served according to the menu of the day will be modified for particular inmates to comply with any medical diet ordered for that inmate (e.g., puree certain food items for particular inmates). Therapeutic diets shall be served during normal serving times except as ordered by the physician. The Contractor is responsible for providing all medically prescribed diets, including snacks for diabetics, and nutritional supplements such as Ensure™.
4. The Contractor, at a minimum, may be required to develop and provide a medical diet menu for diabetics (soft, liquid, pureed, low protein and renal) and include a diabetic snack with caloric values of 1,800, 2,200, 2,400, and 2,800 calories and make those available for inmates determined by the medical provider of the Central New Mexico Correctional Facility (CNMCF).
5. The Contractor, at a minimum, may be required to provide protein shakes and fresh eggs (boiled or scrambled) which can be prepared in food service, to those inmates determined by the medical provider at the CNMCF special care units (LTCU, Geriatrics', MHTC and Alternative Placement Area (APA). Additionally, protein bars can be purchased or prepared when necessary.

6. The Food Service Director in each facility shall have a dietitian available to formulate and write menus for those therapeutic diets not covered by the general menu.
7. As requested, the Contractor shall follow established procedures, which will allow for therapeutic diet review prior to removal of inmates from special diets because they fail to comply with the prescribed diet. This is to safeguard both the Contractor and NMCD from potentially costly lawsuits. The procedure shall be approved by the NMCD Medical Director or Health Services Administrator or his or her designee and such approval should be well documented, properly filed and retained.

**P. Change Orders**

1. At any time, NMCD may make changes within the general scope of services of the Agreement by issuing a "change order", as defined in Section 13-1-38, NMSA 1978. If a change order affects the Contractor's costs, the parties shall mutually agree on a price adjustment.

If Contractor identifies a special project or additional work, a written cost estimate and schedule shall be submitted to NMCD. The cost estimate will be based upon the administrative, food, and supply costs submitted in the Contractor's proposal and this Agreement. Prior written approval by NMCD for all change orders, whether initiated by Contractor or Department is necessary.

**III. COMPENSATION -PAYMENT OF INVOICES**

A. Billing

The Contractor, on a bi-weekly basis, shall submit a separate billing for each Corrections Department facility and any other required documentation to support meal services provided. The billing must contain by date, the actual number of meals served in each facility and the applicable rate applied per meal. In addition, the current billing must also include and itemize (i.e., via clearly footnoting the penalty type and period covered) prior period penalties assessed as deductions of the current billed amounts.

B. Payment Terms

Payment terms required of NMCD shall be net thirty (30) days, measured from the date NMCD receives the Contractor's invoice to the date the Contractor receives payment.

**IV. REQUIRED RECORDS, INSPECTIONS, AND MEETINGS**

A. Recording Keeping Requirements

The Contractor shall maintain the following records, which shall be made available to NMCD upon request.

1. Complete and accurate records of the number of meals served by location in accordance with the established institutional procedures. NMCD reserves the right to verify the number of meals served.
2. A two week current staffing pattern and work schedules for all employees.
3. A complete job description for all positions and inmate assignments.
4. Records of all staff to include days worked and absences.
5. Records of meal counts for each meal by location according to established meal count procedures.
6. Daily records documenting all refrigerator and freezer temperatures, serving temperatures of all menu items at each meal, wash and rinse temperatures at all meals and any other records necessary to meet health standards and to document compliance with the New Mexico Environment Department Food Service and Food Processing Regulations, and with American Correctional Association (ACA) Standards.
7. The planned menu for the coming month shall be dated, posted and distributed to the inmate population or posted in a conspicuous place.
8. Nutritional analysis, recipes, and portion sizes for all menu items. Recipes must include procedures for hazard analysis critical control point (HACCP Plans).
9. A sample meal of each meal prepared and served shall be kept for 72-hours for testing purposes.
10. A daily food temperature log in the prison segregation units and other satellite feeding locations.

**B. Inspections and Meetings**

1. Personnel of NMCD may at any time inspect the following: the food storage area, preparation area, serving areas, and test food for palatability, proper portion size, accuracy of medical diets (CNMCF Long Term Care Unit and the MHTC Unit), and attractiveness. The Department may reject food or material if it does not meet the specifications contained in the terms of the contract or in the approved menu, and require the Contractor to substitute food or material, which complies with the specifications.
2. A Contractor's representatives and Department representatives shall meet quarterly to discuss contract compliance by the parties. A written report of meetings, outcomes, and necessary corrective action shall be submitted to the Director of Adult Prisons or the Food Service Contract Monitor and Compliance Bureau Chief by the Contractor.

## **V. FEDERAL SURPLUS COMMODITIES**

### **A. Use of USDA Commodities**

The Contractor also agrees to fully use the U.S. Department of Agriculture's donated food program commodities in meal preparation and to credit NMCD facilities monthly invoices accordingly. The credit will be equal to the Contractor's discounted purchase price received from the Contractor's supplier(s) for the same commodity, including all discounts. Commodities ordered for each facility will be reviewed and approved by the Food Service Director assigned to the facility and the warden.

The Contractor shall maintain the records of commodities consumed for a period of three (3) years from the close of the Federal fiscal year. The records shall be made available for inspection and audit at any reasonable time and place by representatives to the distributing agency, **NMCD**, and other duly authorized State or Federal representatives.

Facilities that receive commodities shall ensure that they are made available to the Contractor and used only to benefit the facility's feeding operation.

### **B. Inventory Control of USDA Commodities**

Inventory control of the U.S. Department of Agriculture commodities shall be the responsibility of the facilities.

### **C. Compliance with Federal Regulation 250.8**

Contractor agrees to abide by Code of Federal Regulation 250.8, as follows:

1. Any commodities received by the Recipient Agencies and made available to the Food Service Management Company shall inure only to the benefit of the Recipient Agencies feeding operation and shall be used therein.

## **VI. RECORDS RETENTION**

The foods and records of the Food Service Management Company pertaining to the feeding operation of the Agency shall be available for a period of three (3) years from the close of the Federal fiscal year to which they pertain for inspection and audit by Representatives of the Distributing Agency, of the U.S. Department of Agriculture, and of the General Accounting Office at any reasonable time and place.

## **VII. DETAILED REQUIREMENTS**

### **A. Performance Bond and Insurance Requirements**

1. The Contractor shall be required to furnish NMCD with a performance bond equal to ten percent (10%) of the face value of the total annual contract, throughout the term of the contract. A binder to obtain this Bond shall be secured and delivered to State Purchasing Division, with a copy to the NMCD Procurement Manager within 72 hours of notification to contractor of intent to enter into a contract.

2. Contractor agrees that to protect itself and NMCD under this indemnification clause, it shall, at all times during the term of this agreement, have and keep in force liability insurance. Such insurance shall be written by an insurance company licensed to conduct business in the State of New Mexico and shall cover all liability which might arise out of the provision of services under this agreement. Such insurance, which shall designate NMCD as an additional insured, shall provide the following minimum limits of coverage.

a. Comprehensive General Liability, \$1,000,000 Combined Single Limit, to include coverage for the following:

1. Premises-Operations
2. Products/Completed Operations
3. Contractual Insurance
4. Broad Form Property Damage
5. Independent Contractor
6. Personal Injury

b. Automobile Liability, \$1,000,000 Combined Single Limit

c. Workers' Compensation and Employers' Liability

1. Workers' Compensation - Statutory
2. Employer's Liability - \$1,000,000

d. A certificate of Insurance of Contractor's insurance coverage shall be provided to the NMCD annually.

## **VIII. PENALTIES, DEFAULT BY CONTRACTOR. AND LIQUIDATED DAMAGES**

### **A. Definitions**

1. Default: Is defined as the Contractor's material failure to comply with any provision of this Agreement.
2. Non-Curable Default. Is a default that will be assessed penalties and/or liquidated damages upon occurrence

3. Curable Default. Is a default where the Contractor, as advised in writing by NMCD, will be given a period of time (e.g. 30 days or other) to correct the default to the satisfaction of NMCD. If the Contractor fails to cure the default within the reasonable period of time specified, NMCD may choose to assess penalties and/or liquidated damages or pursue other remedies allowed by law.
4. Performance Measures. Are listed in Paragraph B. that follows. They represent food service relevant functions and tasks that NMCD will hold the Contractor accountable for and thus are to be complied with. It is the intent of NMCD, with interactive Contractor participation, to make all of the Performance Measures S.M.A.R.T. This acronym stands for: Specific, Measurable, Attainable, Relevant and Time Bound.

**B. Performance Measure Penalty areas:**

The following penalties, upon Performance Measure non-compliance, shall be applicable to the Contractor (except where the failure to comply with the requirements set forth are due to the Agencies actions or inactions):

**Non-curable:**

1. Non-compliance with mandatory staffing – Non-Curable: In order to measure the adequacy of Mandatory Staffing levels, NMCD with the full and complete cooperation and participation of the Contractor will within 90 days of Contract Execution, develop an agreed to methodology to derive and compare contractual hours to actual hours worked, the latter inclusive of overtime hours. This discussion will include such things as; Contractor converting each of their staff to contract hours, use and reliance on Contractor payroll system, and frequency and mode of analysis to consider monthly, payroll periods, etc. The Table that follows illustrates the penalties that would be assessed for non-compliance in some, but not all areas to be agreed upon.

<b>POSITION TYPE</b>	<b>IF VACANCY VARIANCE IS BELOW</b>	<b>THE NON-CURABLE PENALTY WILL BE</b>
<b>Total Systems Wide</b>	<b>90%</b>	<b>\$2,000</b>
<b>Total Facility Wide</b>	<b>90%</b>	<b>\$1,000</b>
<b>State-wide Managers</b>	<b>90%</b>	<b>\$1,000</b>
<b>Facility Managers</b>	<b>90%</b>	<b>\$750</b>
<b>Facility Assistant Managers</b>	<b>90%</b>	<b>\$500</b>
<b>Facility Supervisors</b>	<b>90%</b>	<b>\$750</b>

## Curable:

**The following Performance Measures, beginning with B.2, are curable.** Because cures require written notice and written follow up generally after 30 days, or for another specified time period to determine whether the default has been cured, it will be necessary for NMCD and Contractor to interactively develop, within 90 days of contract execution, an agreed to methodology to determine contract compliance or non-compliance to the following curable performance measures. This future developmental discussion with the Contractor will include such things as; use of NMCD's Quality Assurance Program (QAP) which currently is the Green, Amber, Red (GAR) Information System Continuous Operational Monitoring tool; proposed length of cure period, development of an objective Contractor Self Assessment Tool to include evidence of compliance and Contractor representation of such, prima facie evidence of non-compliant areas, among other agreed to methods. When the following Performance Measures do not contain a specific cure period, that cure period is to be determined during the aforementioned Contractor discussions.

2. Non-compliance with maintaining required records: \$100 for each documented non-compliance not cured within the specified time period.
3. Non-compliance with employee training requirements: \$100 for each documented non-compliance not cured within the specified time period. No penalty shall accrue to the Contractor if the Procuring Agency failed to make training required and provided by the Procuring Agency available on a timely basis, except where an extension is granted due to the exigency of the commencement of this agreement.
4. Non-compliance with billing: \$500 for each documented occurrence of Contractor billing for more than the actual number of meals served plus the refund of the cost of meals billed but not served.
5. Non-compliance with mandatory and non-mandatory ACA Food Service standards during a QAP/GAR Quarterly review of Food Service. For documented non-compliance with an ACA mandatory Food Service standard: \$1,000 and for documented non-compliance with an ACA non-mandatory Food Service standard \$500.
6. Non-compliance with mandatory and non-mandatory ACA Food Service standards during an official ACA Audit: \$12,000 for each instance of documented non-compliance with a Mandatory standard and \$500 for each instance of documented non-compliance with a non-mandatory standard
7. Non-compliance with independent outside organizations that perform Food Service audits and inspections, which would include the Fire Marshall and the New Mexico



Environment Department, among others. For each violation on any such report: \$500 violation cited that is not cured within 30 days

8. Non-compliance with QAP/GAR Quarterly review of Food Service Operations excluding ACA Standard component steps in #5 above: \$50 for each documented non-compliance not cured within the specified time period,
9. Non-compliance with published menu: \$100 for each documented instance of deviation from the published menu without authorization.
10. Non-compliance with sufficient food: \$500 for each documented instance of insufficient amount of food to feed each inmate the published meal at the required portions:
11. Non-compliance with sack lunches: \$100 for each documented instance of deviation, or shortage on sack lunches without authorization.
12. Non-compliance with following approved recipe: \$100 for each documented instance of failing to follow the recipe (proper amount, correct ingredients, or both):
13. Non-compliance with meal start time: \$100 for each documented meal that starts more than 30 minutes late due to fault of Contractor.
14. Non-compliance with food purchases: \$100 for each documented instance of failing to meet minimum standards of food purchase specifications.
15. Non-compliance with two-week inventory of non-perishable food goods: \$100 per documented instance of failing to maintain the stated non-perishable inventory level requirement.
16. Non-compliance with prescribed medical diets and approved religious diets: \$100 for each documented instance of non-compliance.
17. \$500 for documented non-compliance with establishing a comprehensive culinary arts or food service management training program within 120 days of contract execution. In addition, \$500 for non-compliance with the requirement, to ensure that 25 percent of inmates, at all times, are assigned to food service are and enrolled in a comprehensive culinary arts or food service management training program.. The program at initial inception and throughout the term of the contract should include an approved course curriculum and record of successful completion of the program for each inmate enrolled and granted a certificate.
18. \$100 for each documented non-compliance with all other contract provisions not cited above, found to be in non-compliance if reported in writing to the Contractor and the Contractor does not cure within prescribed time lines.

**C. Notification of Default and Liquidated Damages**

Upon the occurrence of curable Defaults on the part of the Contractor, NMCD shall provide written notice to the Contractor of the default and the Contractor must show due diligence to cure the default within the specified cure period which may vary within this Agreement. If the Contractor fails to cure the default within the reasonable period of time specified, or if there have been several defaults or a series of defaults, NMCD may pursue any remedy allowed by law or in equity, to include the above noted penalties and/or liquidated damages. These provisions shall not impair the right of NMCD to reduce the daily service fee.

**IX. PRISON RAPE ELIMINATION ACT (PREA) STANDARDS:**

Any Contractor providing services to NMCD who has direct contact with Inmates, 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]

**X. SECURITY CLEARANCES AND BACKGROUND CHECKS:**

The Contractor and its employees, subcontractors, or agents agree to cooperate with and abide by any and all rules and regulations set forth by the Agency so as not to interfere with the daily operations of the Agency or to jeopardize the health and safety of any employees, inmates or the general public. The Contractor and its employees, subcontractors, or 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 Agency for the Contractor's employees, subcontractors, or agents must be obtained prior to commencement of the job. Agency reserves the right to deny any employee, or agent of the Contractor access to the Agency property should that individual fail the criteria required for the security clearance or be found to be in violation of NMCD policies and procedures.

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

Agency reserves the right to escort any employee, subcontractor or other agent of the Contractor off the Agency property for any inappropriate conduct or actions that jeopardizes the safety, security, or wellbeing of the facility. If such conduct or action should occur, then, this agreement may be terminated immediately.

## **XI. 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, subcontractors, 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 the United States Department of Justice, the New Mexico Department of Public Safety, the New Mexico General Services Department, the New Mexico 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.

## **XII. 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.

## **B. TECHNICAL SPECIFICATIONS**

### **1. Organizational Experience**

Offeror **must**:

- a) provide a detailed 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 Food Services. All Food Services provided to private sector will also be considered;
- b) provide a detailed bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel is identified as those

in Management positions and above whose positions are key in the delivery of services to the Agency. Offeror must include key personnel education, work experience, and relevant/applicable certifications/licenses.

- c) indicate how many Food Services Contracts have been installed in the last two years and what percentage of business revenue is derived from such Food Services engagements;
- d) describe at least two project successes and failures of any Food Services engagement. Include how each experience improved the Offeror's services.

## 2. Organizational References

Offeror must provide a list of a minimum of three (3) references from similar projects/programs performed for private, state or large local government clients within the last three (3) years.

Offeror shall include the following Business Reference information as part of its proposals:

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

## 3. Mandatory Specification

The following Mandatory Specifications are explained in detail in previous section IV. SPECIFICATIONS, A.II DETAILED SCOPE OF WORK above. Offerors are to provide a narrative detailing how they propose to meet each specification.

- Personnel and Mandatory Staffing Requirements
- Employee Training and Development
- Security
- Food Safety Compliance
- Compliance with Standards
- Inmate Labor
- Food Purchase Specifications
- Menus
- Therapeutic Diets

## 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).

### 2. Performance Surety Bond

Offeror(s) must have the ability to secure a Performance Surety Bond in favor of the Agency to insure the Contractor's performance upon any subsequent contract award. Each engagement will be different but the option to require a Performance Surety Bond must be available to the Agencies at time of contract award. **A Statement of Concurrence, as defined in Section I.F.37, must be submitted in the Offeror's proposal.**

### 3. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.30 and APPENDIX E, and to return a signed, unaltered form will result in Offeror's disqualification.**

#### **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 APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

#### **5. 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. If the agency decides Oral Presentations are not necessary due to proposal contents having satisfied the Evaluation Committee, notification will be given to all Offerors that Oral Presentations have been suspended.

#### **6. Cost**

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by price per meal. All costs for meal amounts provided must include all labor, materials, equipment, transportation, training and profit to provide the goods and/or services described in Section IV.A.II.

#### **7. 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, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.

## 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.

<b>Evaluation Factors</b> <i>(Correspond to section IV.B and IV C)</i>	<b>Points Available</b>
<b>B. Technical Specifications</b>	
B. 1. Organizational Experience	100
B. 2. Organizational References	100
B. 3. Mandatory Specification	450
<b>C. Business Specifications</b>	
C.1. Financial Stability	Pass/Fail
C.2. Performance Surety Bond	Pass/Fail
C.3. Letter Of Transmittal	Pass/Fail
C.4. Campaign Contribution Disclosure Form	Pass/Fail
C. 5. Oral Presentations	50
C.6. Cost	300
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>
C.7. New Mexico Preference - Resident Vendor Points per Section IV C. 7	<b>50</b>
C.7. New Mexico Preference - Resident Veterans Points per Section IV C.7	<b>100</b>

Table 1: Evaluation Point Summary

### B. EVALUATION FACTORS

#### 1. B.1 Organizational Experience (See Table 1) 100 Points Available

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

Experience	= 40 Possible Points
Key Personnel	= 25 Possible Points
Food Services Contracts	= 10 Possible Points
Project successes/failures	= 25 Possible Points

## **2. B.2 Organizational References (See Table 1) 100 Points Available**

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/3 of the total points for this category. Lack of a response will receive zero (0) points.

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 Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

## **3. B.3 Mandatory Specifications 450 Points Available**

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section.

- Personnel and Mandatory Staffing Requirements 50 points
- Employee Training and Development 50 points
- Security 50 points
- Food Safety Compliance 50 points
- Compliance with Standards 50 points
- Inmate Labor 50 points
- Food Purchase Specifications 50 points
- Menus 50 points
- Therapeutic Diets 50 points

## **4. C.1 Financial Stability (See Table 1) PASS/FAIL**

Pass/Fail only. No points assigned.

## **5. C.2 Performance Bond (See Table 1) PASS/FAIL**

Pass/Fail only. No points assigned.

## **6. C.3 Letter of Transmittal (See Table 1) PASS/FAIL**

Pass/Fail only. No points assigned.

## **7. C.4 Campaign Contribution Disclosure Form (See Table 1) PASS/FAIL**

Pass/Fail only. No points assigned.



**8. C.5 Oral Presentation (See Table 1) 50 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 held all Offerors will receive the maximum amount of total points for this Evaluation Factor).

**9. C.6 Cost (See Table 1) 300 Points Available**

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

$$\frac{\text{Lowest Responsive Offeror's Cost}}{\text{Each Offeror's Cost}} \times \text{Available Award Points}$$

NMCD will use the cumulative proposed pricing of each Offeror as the base for calculating this formula.

**10. C.7. 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 Resident Business Preference**

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Business is 5% of the total points available in this RFP.

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

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

**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. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. In accordance with

13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). 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**

**FOOD SERVICES**  
**#10-00000-20-00036**  
**ACKNOWLEDGEMENT OF RECEIPT FORM**

This Acknowledgement of Receipt Form should be signed and submitted no later than **August 26, 2020**. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

In acknowledgement of receipt of this Request for Proposal, the undersigned agrees that he or she has received a complete copy of the RFP, beginning with the title page, and ending with APPENDIX F.

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

ORGANIZATION: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

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

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

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

**Submit Acknowledgement of Receipt Form to:**  
To: Yuliasuti Wulandari  
E-mail: Yuliasuti.Wulandari@state.nm.us  
Subject Line: Food Services 10-00000-20-00036

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

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

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

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

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

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

**Name(s) of Applicable Public Official(s) if any:** \_\_\_\_\_  
**(Completed by State Agency or Local Public Body)**

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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

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

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

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

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s)

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(Attach extra pages if necessary)

Signature

Date

Title (position)

**--OR--**

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

Signature

Date

Title (Position)

**APPENDIX C**  
**DRAFT CONTRACT**

**The Agreement included in this Appendix C represents the price agreement the Agency intends to use to make awards. The State of New Mexico and the Agency reserve the right to modify the Agreement prior to, or during, the award process, as necessary.**



# Draft Contract

## State of New Mexico

Agreement No. \_\_\_\_\_

THIS Agreement (“Agreement”) is made by and between the State of New Mexico, **CORRECTIONS DEPARTMENT** hereinafter referred to as the “Procuring Agency” and **[Insert Contractor Name]**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et. seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the **RFP, Food Services # 10-00000-20-00036** and the Contractor’s response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUALLY AGREED BETWEEN THE PARTIES:

1. **Definitions.**
  - A. "Agreement Administrator" means the individual appointed by the SPA to administer the Price Agreement.
  - B. "Business Hours" means 8:00 a.m. to 5:00 p.m. Mountain Time.
  - C. "Local public body" means every political subdivision of the state and the agencies, instrumentalities and institutions thereof.
  - D. "New Mexico State Purchasing Agent" or "NMSPA" means the purchasing agent for the State of New Mexico or a designated representative. May be used interchangeably with "State Purchasing Agent" or "SPA".
  - E. "Price Agreement" means a definite quantity contract or indefinite quantity contract which requires the Contractor to furnish items of tangible personal property or service to the Procuring Agency which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
  - F. "Procuring Agency" means any state agency or local public body that enters into an Agreement to procure products or services.
  - G. “Products and Services schedule” refers to the complete list of products and services

offered under this Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any. New products and services beyond those in the original procurement (whether RFP or ITB) shall not be added to the Products and Services Schedule.

- H. “RFP” means Request for Proposals as defined in statute and rule.
- I. “We,” “us” or “our” refers to the State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.
- J. “You” and “your” refers to **(Contractor Name)**.
- K. “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.
- L. “Staff” means any individual who is a full-time, part-time, or an independently contracted employee with the Contractor’s company.
- M. “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.
- N. “Contractor” means any business having a contract with a state agency or local public body.
- O. “Award” means the final execution of the contract document.
- P. “Mandatory” – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor.
- Q. “Desirable” – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
- R. “Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this Agreement.
- S. “Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

T. "Hourly Rate" means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel

2. **Scope of Work.**

The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

3. **Compensation.**

A. The Procuring Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per meal, such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the Procuring Agency to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT).**

A. **Payment.** The total compensation under this Agreement shall not exceed [**Insert DollarAmount**] including New Mexico gross receipts tax.] **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.**

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

C. **Taxes.**

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes

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

D. Retainage. Not Applicable – The Parties agree there is no retainage.

E. Performance Bond.

Contractor shall execute and deliver to Procuring Agency, contemporaneously with the execution of this Agreement, a Performance Bond in the amount of **10% of total compensation of this agreement** in the name of the Procuring Agency. The Performance Bond shall be in effect for the duration of this Agreement and any renewals thereof. The required Performance Bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The Procuring Agency's right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor or to the State of New Mexico as a result of Contractor's failure to perform.

4. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE FINAL REQUIRED SIGNATORY. This Agreement shall begin on the date approved by the Final Required Signatory and shall end on **(DATE)** unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. This agreement shall not exceed eight (8) years as set forth in § 13-1-150, NMSA 1978, including extensions and renewals. The Procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories and in accordance with the term of the request for proposals, if this contract was based on a request for proposals.

5. Termination

A. Grounds. The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. Notice; Procuring Agency Opportunity to Cure.

1. Except as otherwise provided in sub-paragraph A of this Clause and the Appropriations Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured

within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

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

6. **Appropriations.**

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

7. **Status of Contractor.**

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

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

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective

date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **Amendment.**

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

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

10. **Merger.**

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

11. **Penalties for violation of law.**

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

12. **Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these

requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. **Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. **Applicable Law.**

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

15. **Records and Financial Audit.**

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

16. **Invalid Term or Condition.**

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

17. **Enforcement of Agreement**

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

18. **Non-Collusion**

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.



19. **Notices.**

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

To the Procuring Agency:

NM Correction Department  
Kathleen Branchal  
4337 NM14, Santa Fe, NM 87508  
PO Box 27116, Santa Fe, NM 87502  
Kathleen.Branchal2@state.nm.us

To all other State Agencies:

State Purchasing Department  
Mark Hayden  
Joseph Montoya Bldg., Room 2016, 1100 St. Francis Dr., Santa Fe, NM 87505  
PO Box 6850, Santa Fe, NM 87502  
Mark.Hayden@state.nm.us

To the Contractor:

[insert name, address and email].

20. **Succession**

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

21. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. **Default/Breach.**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special

damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

23. **Equitable Remedies.**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

24. **New Mexico Employees Health Coverage.**

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

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

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

25. **Indemnification.**

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

notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

26. **Default and Force Majeure.**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. **Assignment.**

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

28. **Subcontracting.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

29. **Inspection of Plant.**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. **Commercial Warranty.**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded

to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **Condition of Proposed Items.**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

32. **Release.**

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

33. **Confidentiality.**

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

34. **Contractor Personnel.**

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

**[Insert Contractor Staff Name(s)]**

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

to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

35. **Incorporation by Reference and Precedence.**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

36. **Inspection.**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at Destination. Tangible personal property rejected at Destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37. **Inspection of Services.**

If this Agreement is for the purchase of services, the following terms shall apply.

A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.

B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the term of performance of this Agreement and for as long thereafter as the Agreement requires.

C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.

D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services do not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

- (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
- (2) terminate the Agreement for default.

**THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES' TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

38. **Insurance.**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
- d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By:  
Alisha Tafoya Lucero, Cabinet Secretary  
NM Corrections Department

Date:

By:  
[Insert Contractor Name, Title]  
[Company Name]

Date:

Approved for legal sufficiency:

By:  
Brianne Bigej, General Counsel  
NM Corrections Department

Date:

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

CRS ID Number: \_\_\_\_\_

**NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.**

By:  
Taxation & Revenue Department

Date:

This Agreement has been approved by the State Purchasing Agent:

By:  
Purchasing Agent  
State of New Mexico

Date:

**Exhibit A**  
**SCOPE OF WORK**

**I. NEW MEXICO CORRECTIONS DEPARTMENT RESPONSIBILITIES**

The New Mexico Corrections Department, (hereinafter "NMCD"), is responsible for the following:

- A. Provide required access to the facility and parking designated locations for Contractor's employees;
- B. Furnish all utilities to the Contractor for its operation, as judged by NMCD to be reasonably needed and necessary;
- C. Permit the use of all existing capital equipment to operate the food services program with the exception of vehicles;
- D. Furnish food storage space, refrigeration, food service facilities and equipment, and other auxiliary facilities required by the Contractor to provide the services specified;
- E. Consider equipment acquisition recommendations that the successful Contractor deems necessary for complete and efficient service;
- F. Provide for removal of all refuse, although the Contractor will be responsible for proper storage and placement of said refuse until removal; and
- G. Provide all necessary equipment repairs and maintenance, to include all building maintenance services that are the result of "normal wear and tear".

**II. DETAILED SCOPE OF WORK**

The scope of work shall consist of operating a statewide food service program in accordance with New Mexico Environment Department standards, American Correctional Association Standards (fifth edition, as revised and/or supplemented) pertaining to food service and safety, and NMCD Policies and Procedures.

**A. Personnel and Mandatory Staffing**

Contractor agrees to provide all coordinating management, supervisors, training, and technical personnel required to meet the requirements set out in the Contract or as amended by mutual agreement of both parties and in accordance with the terms of this agreement. The Contractor will provide the following mandatory positions, at a minimum. To measure the adequacy of Mandatory Staffing levels shown below; and within 90 days after Contract execution, NMCD and the Contractor will interactively develop an agreed to methodology to derive and compare contractual hours and actual hours worked, the latter inclusive of overtime hours.



The Contractor must have a qualified nutritionist or dietician who shall provide written evidence to assure that dietary allowances have been reviewed at least annually to ensure that diets served at each facility meets the nationally recommended allowances for basic nutrition.

Contractor shall meet the Mandatory Staffing hereby identified:

**Statewide Managers** (2)

One District Manager and one Operations Support Manager, one of whom must reside within 75 miles of the Central New Mexico Correctional Facility.

**Food Services Manager**

Central NM Correctional Facility	(1)
Northeast NM Correctional Facility	(1)
Penitentiary of NM	(1)
Roswell Correctional Facility	(1)
Southern NM Correctional Facility	(1)
Springer Correctional Facility	(1)
Training Academy	(1)
<u>Western NM Correctional Facility</u>	<u>(1)</u>
TOTAL	(8)

**Assistant Food Services Manager**

Central NM Correctional Facility	(1)
Penitentiary of NM	(1)
Roswell Correctional Facility	(1)
Southern NM Correctional Facility	(1)
Springer Correctional Facility	(1)
Training Academy	(1)
<u>Western NM Correctional Facility</u>	<u>(1)</u>
TOTAL	(7)

**Food Services Worker**

Central NM Correctional Facility	(9)
Central NM Correctional Facility Bakery	(2)
Northeast NM Correctional Facility	(5)
Penitentiary of NM	(9)
Roswell Correctional Facility	(3)
Southern NM Correctional Facility	(6)
Springer Correctional Facility	(3)

Training Academy	(1)
<u>Western NM Correctional Facility</u>	<u>(3)</u>
TOTAL	(41)
 <b>Grand Total Mandatory</b>	 <b>58</b>

**B. Personnel and Mandatory Staffing Requirements**

1. The Contractor shall provide sufficient staff to supervise inmates working in the food services area. Inmate job assignments include but are not limited to the preparation and serving of meals, receiving materials, and sanitation. Each facility based upon their staffing capability, shall make every reasonable effort to provide at least one correctional officer assigned to oversee the safety and security of the food service operation in areas in need of enhanced security.
2. The Contractor shall recruit, train, and maintain throughout the contract term a manager and chief cook.
3. The Contractor will provide dietetic, purchasing, and personnel guidance and consultation. Contractor shall ensure that Contractor's employees maintain compliance with all Federal, State, and Local health rules and regulations throughout the term of the agreement.
4. Employees must not have been convicted of a felony, and must submit any arrest record information to the Director. All employees of the Contractor must clear a background check prior to working in any NMCD Facility. This includes any employee that is transferring from one NMCD facility to another. A written clearance from the previous facility must also be obtained prior to the employee starting and submit to facility HR Manager.
5. Contractor agrees that the Statewide Managers at each prison will have at least two (2) years of experience in providing dietary food services in prisons and/or jails (military experience is accepted as correctional experience).
6. Contractor agrees to maintain a management staff on duty during operating hours at all facilities and will provide administrative offices, dietetic, purchasing, and personnel guidance and consultation.
7. The Agency will make every effort to review and approve qualified contractor applicants, in particular those within the contractor's management staff. As stated in paragraph 12, approval of replacement personnel shall not be unreasonably withheld.

8. Contractor shall ensure that Contractor's employees maintain compliance with all Federal, State, and Local health rules and regulations throughout the term of the agreement.
9. Contractor shall maintain a position number and a written job description for each member of the Contractor's staff, which clearly describes assigned duties and responsibilities. Contractor's employees must be able to fluently and clearly speak, read and write English, provided that such requirement does not conflict with local, state or federal law.
10. Contractor shall be solely responsible for all personnel costs including of its employees under this Agreement salaries, taxes, and fringe benefits.
11. All personnel employed by the Contractor shall comply with all lawful policies and procedures that are implemented in each facility. All personnel applicants shall be required to pass a background investigation conducted by NMCD as a prerequisite for initial and/or continued employment. NMCD shall review all applicants and reserves the right to deny access to its facilities by any of the Contractor's employees for security or other reasons.
12. All Contractor personnel assigned to a facility shall be required to undergo and pass a drug urinalysis test as both a pre-requisite for initial and/or continued employment with the Contractor, and all personnel will be randomly drug tested at least annually.
13. The Contractor will consult with the NMCD Director of Adult Prisons and/or Designate, prior to replacing or filling the following positions: Statewide Food Service Manager or Statewide Assistant Food Service Manager. The Contractor will consult with the affected facility Warden prior to replacing or filling the facility Food Service Manager position. The Director of Adult Prisons and/or Designate and the facility Warden have the authority to approve or disapprove the respective positions specified above. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure that the replacement personnel are productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.
14. The Department shall retain the right to request removal of any of the Contractor's personnel at any time for any lawful reason.
15. The Contractor shall ensure certification of all employees in a food safety program approved by NMCD within thirty (30) days of employment with the Contractor. Proof of certification shall be provided to NMCD.

16. Provision of ongoing training for the proper operation and use of all food service equipment.
17. Inclusion of other in-service training in sanitation techniques and procedures, emergency feeding, dish washing, food borne illness, safety, and other training needs as they are assessed and deemed necessary by NMCD or the Contractor
18. Maintenance of written documentation of training required by this Section B and any other training provided, which must be permanently maintained in each employee's personnel file.

**C. Employee Training and Development**

1. Contractor will be solely responsible for providing and maintaining the applicable training films, slides, literature, daily work schedules, standard operating procedures, and training manuals used in training Food Service Stewards. These materials shall at all times remain the property of the Contractor. The Contractor shall require all its personnel to complete a one (1) week, forty (40) hour, pre-service orientation training period that shall be completed within the first two (2) months of employment.
2. All employees must be certified in a food safety program approved by NMCD within thirty (30) days of employment with the Contractor. Proof of certification shall be provided to NMCD and the facility training manager.
3. The Contractor shall provide ongoing training for the proper operation and use of all food service equipment.
4. Other in-service training shall be provided by the Contractor to include: sanitation techniques and procedures, emergency feeding, dish washing, food borne illness, safety, and other training needs as they are assessed and deemed necessary by NMCD or the Contractor.
5. The Contractor will maintain written documentation of training required by this section C and any other training provided, which must be permanently maintained in each employee's personnel file.
6. Contractor will be solely responsible for providing and maintaining the applicable training films, slides, literature, daily work schedules, standard operating procedures, and training manuals used in training Food Service Stewards. These materials shall at all times remain the property of the Contractor.

**D. Authorized Food Service Operations**

Contractor shall not be authorized to use the NMCD facilities or to conduct or prepare any food items for any other food service or purpose not specified in the contract, unless otherwise specifically approved by the Agency in writing.

**E. Equipment Maintenance and Use**

- 1.The Contractor will conduct and document inspections of food service equipment owned by NMCD. The Contractor shall notify appropriate facilities personnel, in writing, of any equipment malfunctions or equipment in need of replacement.
- 2.The Contractor will develop and implement a safety and instructional program to ensure that all food service stewards and inmates are familiar with proper operating procedures/conditions of food service equipment. The Contractor will provide a vehicle for those locations that provide satellite deliveries to units and provide proof of insurance. Contractor will be responsible for any maintenance, repairs and fuel cost.
- 3.Repair or replacement of equipment necessitated by normal wear and tear will be accomplished by the facilities. The Contractor is responsible for repair and replacement of equipment that is rendered un-serviceable through the abuse or negligence of persons employed or supervised by the Contractor.

**F. Computerized System**

The Contractor shall provide computer hardware and software to implement and maintain systems for inmate menu assessments, food production and delivery controls, inventory management, billing, management reports, payroll and labor reports and other managerial functions. Contractor shall provide and consistently apply at all facilities, a method of technology that will accurately track the number of meals served, for true accountability of food cost and billing accuracy.

**G. Security**

1. The Contractor staff shall comply with all lawful policies and procedures of NMCD and the facilities. Contractor staff vehicles shall be subject to search while on facility grounds. Published rules and regulations shall be available from NMCD staff to the Contractor.
2. The facilities shall provide identification badges for all Contractor personnel. The Contractor is responsible for paying the cost of all lost badges for persons under their employ.
3. The Contractor staff shall not engage in any illegal, prohibited, or other activities with inmates, other contractor staff, or NMCD staff which could endanger or disrupt the orderly operation of the facilities.

4. During the duration of the contract period, the facilities shall provide security measures for the Contractor's employees comparable to that provided for NMCD employees. All employees of the Contractor must clear a background check prior to working in any NMCD Facility. This includes any employee that is transferring from one NMCD facility to another. A written clearance from the previous facility must also be obtained prior to the employee starting and submitted to the facility HR Manager.
5. The facilities reserve the right to restrict access to the facilities and require the immediate removal of any person(s) without prior notification for security reasons.

#### **H. Food Safety Compliance**

1. The Contractor shall ensure that Contractor's employees maintain compliance with all Federal, State, and Local health rules and regulations throughout the term of the contract.
2. All personnel employed by the Contractor shall have a medical statement certifying that they are free of any contagious form of tuberculosis, hepatitis, or any other infectious disease. T.B. skin tests shall be administered annually by the Contractor on all personnel under their employ except those employees with documented past positive T.B. tests. A chest x-ray is required for personnel with positive tests at the time of hiring and for all personnel who convert their tests to positive.
3. Contractor personnel shall be removed temporarily from work if they develop contagious respiratory, gastrointestinal, or skin diseases, and shall not return to work until medically cleared.

#### **I. Compliance with Standards**

1. The Contractor shall be responsible for ensuring that the food services kitchen and dining areas meet all statutory and regulatory specifications and requirements of the New Mexico Environment Department, Environmental Improvement Division. Upon inspection, if authorized health or food inspectors find any violations by the Contractor of the specifications and requirements of the statutes and regulations of the New Mexico Environment Department Environmental Improvement Division, the Contractor will have twenty-four (24) hours to bring the food services facility into compliance, or a reasonable amount of time where the required improvement cannot be completed within 24 hours. Contractor shall be responsible for costs of providing cadet meals at a local restaurant at any time such violations affect meal preparation or serving. Failure to comply with these requirements may result in termination of the food services contract and no payment will be made nor will any amount be owed to the Contractor for any period of time in which the facility is out of compliance.
2. American Correctional Association: The Contractor shall be responsible for compliance with ACA Standards for Correctional Training Academies (First Edition and as revised or supplemented), and will participate with NMCD in the accreditation, or reaccreditation

process and ensure the food service facility operates in accordance with ACA Standards. The contractor shall ensure that menu evaluations are conducted at least quarterly by institution food service supervisory staff to verify adherence to the established basic daily servings. Dietary allowances, as adjusted for age, sex, and activity, should meet or exceed the recommended dietary allowances published by the National Academy of Sciences.

**J. Inmate Labor**

1. The Facilities shall provide inmates for assistance in food preparation, serving, sanitation, and other food services activities at the following locations:

<u>New Mexico Corrections Department Inmate Labor</u>	
Central NM Correctional Facility	96
Northeast NM Correctional Facility	40
Penitentiary of NM	50
Roswell Correctional Facility	25
Southern NM Correctional Facility	40
Southern NM Correctional Facility	
Minimum Restrict	25
Springer Correctional Facility	25
Training Academy	6
<u>Western NM Correctional Facility</u>	<u>40</u>
TOTAL	347

2. Inmate job assignments include, but are not limited to: food preparation, serving of meals, receiving materials, and sanitation duties. The Contractor will provide job titles and job descriptions for all inmate job positions.

3. All salaries for inmate labor shall be paid directly by NMCD. Salaries shall be based on information provided by the Contractor in accordance with established inmate payroll policies. Pay will be for a forty (40) hour work week. Any overtime work performed by inmates must be requested by the Contractor and will be paid by the Contractor at the same rate of pay for regular hours. Inmates are generally not available to work during lockdowns.

4. The Contractor is responsible for conducting a documented health and sanitation check on all inmate food service workers reporting to work. Inmate food service workers shall be temporarily removed from work if they have open wounds on the skin or if they appear to have respiratory, gastrointestinal, or skin diseases. Such inmates shall not return to work until medically cleared. Inmates, who report to work with dirty hands, fingernails, clothes, or the like, shall not be permitted to work.

5. Each prison shall be responsible for providing clean food service uniforms for inmates

assigned to food service, and such uniforms will be in good condition.

- 6.A comprehensive inmate culinary arts training program in culinary arts and food service management will be developed and implemented by the Contractor within 120 days of the award of this contract. The curriculum and certification is subject to the approval of NMCD Director of Recidivism Reduction and the Director of Adult Prisons.

The Training Program will provide for the following:

- a. Training will be made available to at least 25% of the total number of inmates employed by the Contractor at each facility.
- b. Documentation for inmate participants demonstrating progression through the curriculum and mastery of individual program components.
- c. Certificate of completion for successful participants.
- d. The Contractor shall give first employment preference to NMCD inmates who have successfully completed the program and who parole or discharge to the community, to the extent that Contractor has other food service contracts within the state of New Mexico with positions available where such inmates could lawfully and contractually work. Such former inmates may not be hired by the Contractor to work in any correctional facility.

**K. Food Inventory, Supplies, and Purchases**

1. At the termination of the contract, the outgoing Contractor agrees to sell the "ending inventory" of expendable supplies and food products at cost.
2. The Contractor shall maintain an adequate inventory of expendable supplies including, but not limited to: serving items, cooking items, disposable gloves, paper goods, trash can liners, plastic ware, cleaning supplies and detergent and chemicals used in washing of cooking, serving and eating utensils (dishware, utensils, pots, etc.) Generally, non-toxic substitutes for items such as bleach and oven cleaners will be used. Caustic and toxic substances will be handled in accordance with ACA Standards. The contractor shall provide an option of new technology for control of inventory accountability and cost.
3. The Contractor is responsible for purchasing the correct food items, supplies, and other merchandise. Such items shall be ordered and received in the required quantity and quality and the Contractor will ensure that deliveries are made timely to adequately meet the needs of each facility.
4. The Contractor will ensure that deliveries are made to correspond with the



appropriate schedules and security procedures of the institutions. The facilities shall require advance notification of all deliveries.

5. Food inventories purchased are the property of the Contractor and the Contractor is responsible for loss, damage, spoilage or theft thereof.
6. The Contractor shall be responsible for the proper handling, storage, and refrigeration of food items.
7. All food items purchased by the Contractor for the food production are subject to inspection and approval by each respective Warden, Duty Officer, Food Contractor Monitor, and the state dietician.
8. The Contractor agrees that preference shall be given to local suppliers whenever practicable.
9. The Contractor shall maintain a two (2) week inventory in stock of nonperishable food. All inventories shall be rotated regularly and the Contractor shall ensure food items are not served after the suppliers or manufacturers expiration date. NMCD, will not pay for spoilage, damage, obsolescence, or theft of food items. Contractor is responsible for securing freezer/refrigeration truck in the event of an emergency utility failure. Storage will be made available at the NMCD facilities warehouses for the Contractors inventory.
10. The Contractor shall be responsible for providing medium weight plastic tableware, spoons, and forks, for use in both the inmate and staff dining halls.
11. The Contractor shall provide all serving utensils, such as but NOT limited to ladles, spatulas, etc. The Department shall supply trays, tumblers, and bowls. The Contractor shall supply all required Styrofoam products such as foam- hinged trays, plates, bowls and cups, etc. The Contractor shall be responsible for the inventory of these items and ensure proper handling.
12. The Contractor shall supply all paper products, household items, and cleaning supplies. Given that the Facility has provided the Contractor with adequate storage areas, the Contractor shall be responsible for proper storage control of those items to prevent any theft, damage, or other loss. All office supplies necessary for the management of the operation shall be provided by the Contractor, except those forms required by NMCD for compliance with established regulations.
13. The Contractor shall reimburse NMCD at five cents (\$0.05) per page for photocopies reproduced on Department copiers. Food Service equipment and trays damaged through the intentional or negligent acts of the Contractor or the

Contractor's employees shall be the Contractor's responsibility. Contractor is not responsible for reasonable wear and tear. The Contractor shall be responsible for the purchasing and cleaning of linen and uniforms for Contractor staff in the dietary operation. Contractor personnel will be required to wear distinctive food service uniforms that are easily distinguishable from the inmate kitchen labor force.

14. Contractor shall provide written input to the facility Warden on the replacement of food service equipment, kitchen supplies or both. The Contractor will offer Correctional Officer meals, salad bar, and make available a special meal for purchase by both staff and inmates at an additional cost.
15. The Contractor shall be required to have three (3) day pulls available in order to verify the proper ingredients and food are in compliance with said menu.

#### **L. Food Purchase Specifications**

The specifications establish a minimum quality acceptable to NMCD in the procurement of raw foods. The Contractor shall furnish NMCD with a complete list of the grade and quality of raw food to be used in the production of meals, snacks, and other nourishment.

##### **New Mexico Corrections Department Food Purchase Specifications**

- Canned fruits -fancy and choice grades/water packed
- Dairy products -Grade A fresh milk 2% fat or lower
- Eggs -USDA Grade AA (large)
- Frozen foods -Grade A
- Fresh produce and fruits - #1 quality
- Canned vegetables – choice and extra standard grades
- Meats, poultry, and fish
  - Beef-USDA choice no boneless lean beef trimmings (Pink Slime)
  - Veal - USDA choice
  - Lamb -USDA choice
  - Poultry-USDA choice
- Ground beef and ground turkey - USDA utility or better with fat content between 18 and 25 percent (18%- 25%) no boneless lean beef trimmings (Pink Slime).
- Textured vegetable soy products will be allowed but must be approved by the Director of Adult Prisons for the initial menu and on an advanced written approval basis thereafter.
- Imitation cheese products may be used in meal preparation; however, they may not be used as an entree. Low fat cheese is to be used for entrees, such as hot or cold sandwiches; toppings; and garnishes.
- The Contractor shall ensure that all food preparation will be performed with minimum or no quantity of salt and saturated fat. No animal fats such as

lard will be used.

**M. Meal Preparation Locations**

The following meal preparation areas will be used:

<u>Facility</u>	<u>Kitchen Location</u>	<u>Locations Served</u>
Central NM Main Unit	Central Main unit MHTC	Central Main Unit (RDC, GP, etc.) MB.TC, LTCU
Central NM Min. Restrict		Central NM Min. Restrict
Central NM Minimum	Central NM Minimum	Central NM Minimum
Northeast NM Correctional Facility	NENMCF	NENMCF Dining
Penitentiary of NM	PNM	PNM Minimum Restrict Unit
Roswell Correctional Center	RCC	RCC Dining/DWI
SNMCF JRS Unit	SNMCF JRS Unit	SNMCF JRS Unit
SNMCF PO Unit	SNMCF PO Unit	SNMCF PO Unit
Springer Correctional Center	SCC	SCC Dining
Training Academy	Training Academy (TA)	TA Dining Hall
Western NMCF	WNMCF	B-dining

1. The Contractor shall provide meals at each facility in accordance with established operating schedules and conditions.
2. Inmates shall be served in locations to be designated by NMCD, which locations may be changed at the discretion of NMCD. Generally, Level I and Level II inmates are served in a dining hall; Level III and Level IV inmates are served in the pod common area; and, Level V and VI inmates are served in their cells. The Contractor shall provide meal service as determined by NMCD for inmates located in the segregation units, long term care unit (infirmary), inmates confined to living units, prison industries (sack lunches), off-site work details, and other locations requested by the facility wardens.
3. Meals served at satellite locations will separate hot and cold food and the delivery method will ensure that hot and cold food temperatures are met at the point-of-service. Styrofoam products and plastic ware will be furnished at the expense of the Contractor.
4. Meal service will be provided to employees in the employee dining facilities. At each prison facility, correctional officer supervisors, transportation officers and correctional officers who work a double shift are provided a meal by NMCD at no cost to the employee. Other staff may obtain meals by purchasing a meal ticket. Contractors are required to provide the meals and the Agency will pay for each meal at the same price as the inmate per meal rate.
5. The Contractor is responsible for determining the appropriate number of meals to be

prepared and served. The Contractor shall provide sufficient meals for all inmates, NMCD employees, contract staff, and approved visitors who wish to eat according to the approved menu schedule.

## **N. Menus**

The Contractor will develop a 5-week cycle menu that meets the requirements contained in the following menu specifications. The menu shall identify: (i) the cooked weight serving size portion; (ii) the cooked weight of meat used in combination recipes; and, (iii) use of any item that contains textured vegetable soy protein. The Contractor shall provide a complete nutrient analysis and cooked weight serving size portion for every menu item.

The Contractor shall prepare and serve well balanced meals which consist of a minimum of 3,000 calories per day. Protein must provide an average of 15% of total calories; carbohydrates must provide an average of 55% of total calories; and fat must provide an average of 30% of total calories with no more than 10% of calories from saturated fat. The Contractor will use Recommended Daily Allowances (RDA), as determined by the Food and Nutrition Board and the National Academy of Sciences, National Research Council, to provide a generally recognized guideline of nutritional standards. The RDA's Standards for all major vitamins and minerals must be met. Sodium must be limited to an average of 5 grams per day and cholesterol must be limited to an average of 500 mg per day or less. Typically "spicy" foods (e.g., Frito pie, chili stew, enchiladas, etc.) must be prepared with mild seasonings. Additional seasoning (e.g., peppers or salsa) shall be made available in the dining hall.

The Contractor shall prepare meals to include foods consistent with the ethnic population of the facility. Flavor, texture, varieties and color combinations must also be considered. To decrease monotony, the 5-week cycle menu will be reviewed and revised by the Contractor at least annually and signed by facility Warden. Unpopular menu items will be replaced by other more acceptable food items. Two menus (spring and summer) and (fall and winter) which reflect availability of seasonal foods, traditional holiday menus, and heavier foods during the colder weather months and light, cool, and crisp foods during the warmer weather months shall be provided to Warden by March 1<sup>st</sup> and September 1<sup>st</sup>.

- d. Breakfast: The Contractor shall prepare and serve a balanced breakfast each day. Breakfast shall consist of such foods as fruit or juice, cereal, eggs, toast or bread substitute and margarine. A beef or turkey product shall be served at breakfast at least four (4) times per week. Each breakfast meal shall include 8 ounces of milk and coffee in accordance with viand submitted menu. In addition, four (4) ounces of fruit drink in accordance with viand submitted menu shall be served four times per week. Water shall be offered at all meals. The food shall be rotated to provide variety in sufficient quality and quantity to satisfy the needs of designated persons taking this meal.
- e. Lunch/Dinner Meal: The Contractor shall prepare and serve balanced meals each

day. The lunch and dinner meals shall consist of an entree, one (1) cooked vegetables or vegetable substitute, dessert, bread or bread alternative, margarine when appropriate, choice of available beverage, and salad. If tossed salad is served, it must contain lettuce and three additional raw vegetables such as tomato, celery, carrots or cabbage and include an appropriate salad dressing. At least one (1) of the salads being served during the day (either the lunch or dinner meal) shall be of a fresh fruit or fresh vegetable variety. Every lunch and dinner entree shall use beef, poultry or fish as the protein component. The entree will consist of 3-4 ounces (cooked weight) of meat, fresh poultry, or fish; or 8 ounces (cooked volume) of stew or casserole containing meat. Each lunch and dinner meal shall include a beverage in accordance with viand submitted menu. Water shall be offered at all meals.

f. Miscellaneous: The Contractor shall provide two (2) desserts per day, one (1) at lunch, and one (1) at dinner. Either whole fresh fruit or sliced fresh fruit (4-6 ounce portion) shall be served not less than three (3) times per week and may be served for dessert.

No pork, pork product, or pork byproduct will be used as a menu item or in the preparation of any menu item.

Future changes to the menu shall be certified by a registered dietitian along with a complete nutritional analysis and cooked weight portion size for each item on the specified menu for each meal as required in this paragraph N (a-c). The menu submitted, once reviewed and approved by NMCD, shall be instituted by the Contractor upon contract start date. All requests for changes in the approved menu shall be submitted to the Adult Prisons Division Director who shall make the final decision concerning the appropriateness of the menu. The Director of Adult Prisons may require the serving of a special meal, not on the cycle menu, one time per calendar quarter at each facility, such meal to be implemented in recognition of good behavior or special circumstances. The menu for the special meal will be determined by NMCD, with the assistance and guidance of Contractor to ensure that such meal is generally within Contractor's pricing parameters

The Contractor is required to provide for religious diets. Religious diets will be provided to inmates who have been approved by **NMCD**, in accordance with policy, to receive a religious diet including a kosher meal. The Contractor will provide a heart healthy menu option and a female specific menu of fewer calories.

Where combination foods are on the menu, the Contractor shall make available the recipe providing the list of ingredients and their quantities, the number of servings, and the size of each serving with the five (5) week menu cycle. Holiday and special event menus shall be provided. At a minimum, the Contractor shall provide special dinners at all facilities on the following holidays:

## **New Mexico Corrections Department Holiday/Special Event Calendar**

Martin Luther King Day  
Memorial Day  
Labor Day  
Christmas Day  
Spring Holiday  
Thanksgiving Day  
Superbowl Sunday

- a. For the traditional fall or winter holidays (i.e. Thanksgiving, Christmas and Martin Luther King Day), two (2) entrees shall be provided to each inmate to consist of either turkey or roast beef, excluding processed products. The ethnic population requirements and holiday requirements apply to food prepared and served for all.
  
- b. For the spring or summer holidays (i.e. Spring Holiday, Memorial Day, and Labor Day), the menu shall consist of two (2) entrees for each inmate to consist of either barbecue beef, or barbecue chicken. For each holiday, each inmate shall receive at least four (4) ounces of each entree served to consist of a total weight of (8) ounces for the meal. Processed meat products may not be used in whole or in part to comply with the meat entree requirements.
  
- c. For Super Bowl Sunday dinner, the Contractor shall provide a sack lunch which consists of the following: two sandwich rolls (hoagie bun, submarine bun, or the like); six (6) ounces of sliced roast beef and/or sliced roast turkey lunch meat; two (2) ounces of sliced low fat cheese; lettuce, sliced tomato, sliced onion, pickles, jalapeno, mayonnaise, and mustard; two (2) ounces of commercially packaged potato chips; 1 cup of potato salad; one (1) commercially packaged candy bar of at least one-and-a-half ( 1.5) ounces; a 12-ounce can/plastic bottle of carbonated soda.

### **Sack Lunches:**

The Contractor shall prepare and date all sack lunches as may be requested. The sack lunch shall consist of two (2) sandwiches containing a minimum of 1 1/2 ounces of protein complement per sandwich, a piece of fruit, a dessert, one (1) commercially package of potato chips or other similar item, and a beverage. A larger sack lunch for outside work details containing additional food items may be prepared and charged for at 1 1/2 times the normal meal cost at the discretion of the Facility Warden. The Contractor shall vary the type of meat and other items in the sandwiches on a strict rotation basis to avoid repetition. The Contractor shall provide a five-week sack lunch menu. The menus shall have a variety of meals and will be provided to Warden upon request.

### **Lockdown Menus**

The Contractor shall provide actual menus for the first three (3) days of a facility lockdown. If the lockdown continues beyond three (3) days, the Contractor shall submit additional menus for the designated facility. The Contractor shall maintain a three (3) day inventory for the lockdown menu. All menus shall be reviewed and certified as to nutritional adequacy by

a registered dietitian provided by the Contractor, including the nutrient analysis and portion size for all items as served. The Contractor shall cite references used to determine nutritional value.

#### **O. Therapeutics Diets**

1. The 5-week cycle menu shall generally meet the dietary requirements for low-fat and low-sodium diets. With diet counseling for inmates from the medical staff and inmate avoidance of some menu items, this same general menu will also meet the needs for low cholesterol, bland and diabetic diets.
2. The Contractor is responsible for developing a diet manual for the most commonly prescribed medical diets, such as soft, mechanical soft, liquid, pureed, low protein, and renal. The Contractor will prepare and serve these and any other prescribed therapeutic diets, at regular meals and snacks ordered by the medical staff. The Contractor's dietician must be consulted for any medical diets that are not clearly addressed in the diet manual. The diet manual will be reviewed and approved by the NMCD.
3. Meals and snacks for medical diets will be prepared and served in compliance with treating Clinicians' orders, the Standard of Care for medical diets, and the approved Diet Manual. Where possible, the food items served according to the menu of the day will be modified for particular inmates to comply with any medical diet ordered for that inmate (e.g., puree certain food items for particular inmates). Therapeutic diets shall be served during normal serving times except as ordered by the physician. The Contractor is responsible for providing all medically prescribed diets, including snacks for diabetics, and nutritional supplements such as Ensure™.
4. The Contractor, at a minimum, may be required to develop and provide a medical diet menu for diabetics (soft, liquid, pureed, low protein and renal) and include a diabetic snack with caloric values of 1,800, 2,200, 2,400, and 2,800 calories and make those available for inmates determined by the medical provider of the Central New Mexico Correctional Facility (CNMCF).
5. The Contractor, at a minimum, may be required to provide protein shakes and fresh eggs (boiled or scrambled) which can be prepared in food service, to those inmates determined by the medical provider at the CNMCF special care units (LTCU, Geriatrics', MHTC and Alternative Placement Area (APA). Additionally, protein bars can be purchased or prepared when necessary.
6. The Food Service Director in each facility shall have a dietitian available to formulate and write menus for those therapeutic diets not covered by the general menu.
7. As requested, the Contractor shall follow established procedures, which will allow for therapeutic diet review prior to removal of inmates from special diets because they fail to comply with the prescribed diet. This is to safeguard both the Contractor and NMCD from potentially costly lawsuits. The procedure shall be approved by the NMCD

Medical Director or Health Services Administrator or his or her designee and such approval should be well documented, properly filed and retained.

**P. Change Orders**

1. At any time, NMCD may make changes within the general scope of services of the Agreement by issuing a "change order", as defined in Section 13-1-38, NMSA 1978. If a change order affects the Contractor's costs, the parties shall mutually agree on a price adjustment.
  
2. If Contractor identifies a special project or additional work, a written cost estimate and schedule shall be submitted to NMCD. The cost estimate will be based upon the administrative, food, and supply costs submitted in the Contractor's proposal and this Agreement. Prior written approval by NMCD for all change orders, whether initiated by Contractor or Department is necessary.

**III. COMPENSATION -PAYMENT OF INVOICES**

**A. Billing**

The Contractor, on a bi-weekly basis, shall submit a separate billing for each Corrections Department facility and any other required documentation to support meal services provided. The billing must contain by date, the actual number of meals served in each facility and the applicable rate applied per meal. In addition, the current billing must also include and itemize (i.e., via clearly footnoting the penalty type and period covered) prior period penalties assessed as deductions of the current billed amounts.

**B. Payment Terms**

Payment terms required of NMCD shall be net thirty (30) days, measured from the date NMCD receives the Contractor's invoice to the date the Contractor receives payment.

**IV. REQUIRED RECORDS, INSPECTIONS, AND MEETINGS**

**A. Recording Keeping Requirements**

The Contractor shall maintain the following records, which shall be made available to NMCD upon request.

1. Complete and accurate records of the number of meals served by location in accordance with the established institutional procedures. NMCD reserves the right to verify the number of meals served.



2. A two week current staffing pattern and work schedules for all employees.
3. A complete job description for all positions and inmate assignments.
4. Records of all staff to include days worked and absences.
5. Records of meal counts for each meal by location according to established meal count procedures.
6. Daily records documenting all refrigerator and freezer temperatures, serving temperatures of all menu items at each meal, wash and rinse temperatures at all meals and any other records necessary to meet health standards and to document compliance with the New Mexico Environment Department Food Service and Food Processing Regulations, and with American Correctional Association (ACA) Standards.
7. The planned menu for the coming month shall be dated, posted and distributed to the inmate population or posted in a conspicuous place.
8. Nutritional analysis, recipes, and portion sizes for all menu items. Recipes must include procedures for hazard analysis critical control point (HACCP Plans).
9. A sample meal of each meal prepared and served shall be kept for 72-hours for testing purposes.
10. A daily food temperature log in the prison segregation units and other satellite feeding locations.

**B. Inspections and Meetings**

1. Personnel of NMCD may at any time inspect the following: the food storage area, preparation area, serving areas, and test food for palatability, proper portion size, accuracy of medical diets (CNMCF Long Term Care Unit and the MHTC Unit), and attractiveness. The Department may reject food or material if it does not meet the specifications contained in the terms of the contract or in the approved menu, and require the Contractor to substitute food or material, which complies with the specifications.
2. A Contractor's representatives and Department representatives shall meet quarterly to discuss contract compliance by the parties. A written report of meetings, outcomes, and necessary corrective action shall be submitted to the Director of Adult Prisons or the Food Service Contract Monitor and Compliance Bureau Chief by the Contractor.

## **V. FEDERAL SURPLUS COMMODITIES**

### **A. Use of USDA Commodities**

The Contractor also agrees to fully use the U.S. Department of Agriculture's donated food program commodities in meal preparation and to credit NMCD facilities monthly invoices accordingly. The credit will be equal to the Contractor's discounted purchase price received from the Contractor's supplier(s) for the same commodity, including all discounts. Commodities ordered for each facility will be reviewed and approved by the Food Service Director assigned to the facility and the warden.

The Contractor shall maintain the records of commodities consumed for a period of three (3) years from the close of the Federal fiscal year. The records shall be made available for inspection and audit at any reasonable time and place by representatives to the distributing agency, **NMCD**, and other duly authorized State or Federal representatives.

Facilities that receive commodities shall ensure that they are made available to the Contractor and used only to benefit the facility's feeding operation.

### **B. Inventory Control of USDA Commodities**

Inventory control of the U.S. Department of Agriculture commodities shall be the responsibility of the facilities.

### **C. Compliance with Federal Regulation 250.8**

Contractor agrees to abide by Code of Federal Regulation 250.8, as follows:

1. Any commodities received by the Recipient Agencies and made available to the Food Service Management Company shall inure only to the benefit of the Recipient Agencies feeding operation and shall be used therein.

## **VI. RECORDS RETENTION**

The foods and records of the Food Service Management Company pertaining to the feeding operation of the Agency shall be available for a period of three (3) years from the close of the Federal fiscal year to which they pertain for inspection and audit by Representatives of the Distributing Agency, of the U.S. Department of Agriculture, and of the General Accounting Office at any reasonable time and place.

## **VII. DETAILED REQUIREMENTS**

### **A. Performance Bond and Insurance Requirements**

1. The Contractor shall be required to furnish NMCD with a performance bond equal to ten percent (10%) of the face value of the total annual contract, throughout the term of the contract. A binder to obtain this Bond shall be secured and delivered to State Purchasing Division, with a copy to the NMCD Procurement Manager within 72 hours of notification to contractor of intent to enter into a contract.
  
2. Contractor agrees that to protect itself and NMCD under this indemnification clause, it shall, at all times during the term of this agreement, have and keep in force liability insurance. Such insurance shall be written by an insurance company licensed to conduct business in the State of New Mexico and shall cover all liability which might arise out of the provision of services under this agreement. Such insurance, which shall designate NMCD as an additional insured, shall provide the following minimum limits of coverage.
  - a. Comprehensive General Liability, \$1,000,000 Combined Single Limit, to include coverage for the following:
    1. Premises-Operations
    2. Products/Completed Operations
    3. Contractual Insurance
    4. Broad Form Property Damage
    5. Independent Contractor
    6. Personal Injury
  - b. Automobile Liability, \$1,000,000 Combined Single Limit
  - c. Workers' Compensation and Employers' Liability
    1. Workers' Compensation - Statutory
    2. Employer's Liability - \$1,000,000
  - d. A certificate of Insurance of Contractor's insurance coverage shall be provided to the NMCD annually.

## **VIII. PENALTIES, DEFAULT BY CONTRACTOR. AND LIQUIDATED DAMAGES**

### **A. Definitions**

1. **Default**: Is defined as the Contractor's material failure to comply with any provision of this Agreement.
  
2. **Non-Curable Default**. Is a default that will be assessed penalties and/or liquidated damages upon occurrence

3. Curable Default. Is a default where the Contractor, as advised in writing by NMCD, will be given a period of time (e.g. 30 days or other) to correct the default to the satisfaction of NMCD. If the Contractor fails to cure the default within the reasonable period of time specified, NMCD may choose to assess penalties and/or liquidated damages or pursue other remedies allowed by law.
4. Performance Measures. Are listed in Paragraph B. that follows. They represent food service relevant functions and tasks that NMCD will hold the Contractor accountable for and thus are to be complied with. It is the intent of NMCD, with interactive Contractor participation, to make all of the Performance Measures S.M.A.R.T. This acronym stands for: Specific, Measurable, Attainable, Relevant and Time Bound.

**B. Performance Measure Penalty areas:**

The following penalties, upon Performance Measure non-compliance, shall be applicable to the Contractor (except where the failure to comply with the requirements set forth are due to the Agencies actions or inactions):

**Non-curable:**

1. Non-compliance with mandatory staffing – Non-Curable: In order to measure the adequacy of Mandatory Staffing levels, NMCD with the full and complete cooperation and participation of the Contractor will within 90 days of Contract Execution, develop an agreed to methodology to derive and compare contractual hours to actual hours worked, the latter inclusive of overtime hours. This discussion will include such things as; Contractor converting each of their staff to contract hours, use and reliance on Contractor payroll system, and frequency and mode of analysis to consider monthly, payroll periods, etc. The Table that follows illustrates the penalties that would be assessed for non-compliance in some, but not all areas to be agreed upon.

<b>POSITION TYPE</b>	<b>IF VACANCY VARIANCE IS BELOW</b>	<b>THE NON-CURABLE PENALTY WILL BE</b>
<b>Total Systems Wide</b>	<b>90%</b>	<b>\$2,000</b>
<b>Total Facility Wide</b>	<b>90%</b>	<b>\$1,000</b>
<b>State-wide Managers</b>	<b>90%</b>	<b>\$1,000</b>
<b>Facility Managers</b>	<b>90%</b>	<b>\$750</b>
<b>Facility Assistant Managers</b>	<b>90%</b>	<b>\$500</b>
<b>Facility Supervisors</b>	<b>90%</b>	<b>\$750</b>

## Curable:

- The following Performance Measures, beginning with B.2, are curable.** Because cures require written notice and written follow up generally after 30 days, or for another specified time period to determine whether the default has been cured, it will be necessary for NMCD and Contractor to interactively develop, within 90 days of contract execution, an agreed to methodology to determine contract compliance or non-compliance to the following curable performance measures. This future developmental discussion with the Contractor will include such things as; use of NMCD's Quality Assurance Program (QAP) which currently is the Green, Amber, Red (GAR) Information System Continuous Operational Monitoring tool; proposed length of cure period, development of an objective Contractor Self Assessment Tool to include evidence of compliance and Contractor representation of such, prima facie evidence of non-compliant areas, among other agreed to methods. When the following Performance Measures do not contain a specific cure period, that cure period is to be determined during the aforementioned Contractor discussions.
2. Non-compliance with maintaining required records: \$100 for each documented non-compliance not cured within the specified time period.
  3. Non-compliance with employee training requirements \$100 for each documented non-compliance not cured within the specified time period. No penalty shall accrue to the Contractor if the Procuring Agency failed to make training required and provided by the Procuring Agency available on a timely basis, except where an extension is granted due to the exigency of the commencement of this agreement.
  4. Non-compliance with billing. \$500 for each documented occurrence of Contractor billing for more than the actual number of meals served plus the refund of the cost of meals billed but not served.
  5. Non-compliance with mandatory and non-mandatory ACA Food Service standards during a QAP/GAR Quarterly review of Food Service. For documented non-compliance with an ACA mandatory Food Service standard: \$1,000 and for documented non-compliance with an ACA non-mandatory Food Service standard \$500.
  6. Non-compliance with mandatory and non-mandatory ACA Food Service standards during an official ACA Audit: \$12,000 for each instance of documented non-compliance with a Mandatory standard and \$500 for each instance of documented non-compliance with a non-mandatory standard.
  7. Non-compliance with independent outside organizations that perform Food Service audits and inspections. which would include the Fire Marshall and the New Mexico Environment Department, among others. For each violation on any such report: \$500 violation cited that is not cured within 30 days.

8. Non-compliance with QAP/GAR Quarterly review of Food Service Operations excluding ACA Standard component steps in #5 above: \$50 for each documented non-compliance not cured within the specified time period.
9. Non-compliance with published menu: \$100 for each documented instance of deviation from the published menu without authorization.
10. Non-compliance with sufficient food: \$500 for each documented instance of insufficient amount of food to feed each inmate the published meal at the required portions.
11. Non-compliance with sack lunches: \$100 for each documented instance of deviation, or shortage on sack lunches without authorization:
12. Non-compliance with following approved recipe: \$100 for each documented instance of failing to follow the recipe (proper amount, correct ingredients, or both).
13. Non-compliance with meal start time: \$100 for each documented meal that starts more than 30 minutes late due to fault of Contractor.
14. Non-compliance with food purchases: \$100 for each documented instance of failing to meet minimum standards of food purchase specifications.
15. Non-compliance with two-week inventory of non-perishable food goods: \$100 per documented instance of failing to maintain the stated non-perishable inventory level requirement.
16. Non-compliance with prescribed medical diets and approved religious diets: \$100 for each documented instance of non-compliance.
17. \$500 for documented non-compliance with establishing a comprehensive culinary arts or food service management training program within 120 days of contract execution. In addition, \$500 for non-compliance with the requirement, to ensure that 25 percent of inmates, at all times, are assigned to food service and enrolled in a comprehensive culinary arts or food service management training program.. The program at initial inception and throughout the term of the contract should include an approved course curriculum and record of successful completion of the program for each inmate enrolled and granted a certificate.
18. \$100 for each documented non-compliance with all other contract provisions not cited above, found to be in non-compliance if reported in writing to the Contractor and the Contractor does not cure within prescribed time lines.

**C. Notification of Default and Liquidated Damages**

Upon the occurrence of curable Defaults on the part of the Contractor, NMCD shall provide written notice to the Contractor of the default and the Contractor must show due diligence to cure the default within the specified cure period which may vary within this Agreement. If the Contractor fails to cure the default within the reasonable period of time specified, or if there have been several defaults or a series of defaults, NMCD may pursue any remedy allowed by law or in equity, to include the above noted penalties and/or liquidated damages. These provisions shall not impair the right of NMCD to reduce the daily service fee.

**IX. PRISON RAPE ELIMINATION ACT (PREA) STANDARDS:**

Any Contractor providing services to NMCD who has direct contact with Inmates, 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]

**X. SECURITY CLEARANCES AND BACKGROUND CHECKS:**

The Contractor and its employees, subcontractors, or agents agree to cooperate with and abide by any and all rules and regulations set forth by the Agency so as not to interfere with the daily operations of the Agency or to jeopardize the health and safety of any employees, inmates or the general public. The Contractor and its employees, subcontractors, or 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 Agency for the Contractor's employees, subcontractors, or agents must be obtained prior to commencement of the job. Agency reserves the right to deny any employee, or agent of the Contractor access to the Agency property should that individual fail the criteria required for the security clearance or be found to be in violation of NMCD policies and procedures.

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

Agency reserves the right to escort any employee, subcontractor or other agent of the Contractor off the Agency 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 terminated immediately.

**XI. 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, subcontractors, 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 the United States Department of Justice, the New Mexico Department of Public Safety, the New Mexico General Services Department, the New Mexico 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.

## **XII. 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.



## APPENDIX D

### COST RESPONSE FORM

All costs for meal amounts provided must include all labor, materials, equipment, transportation, training and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).

#### Price Per Meal for the Following Years

Year 1: (11/01/2020 Thru 10/31/2021)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 2: (11/01/2021 Thru 10/31/2022)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 3: (11/01/2022 Thru 10/31/2023)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 4: (11/01/2023 Thru 10/31/2024)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 5: (11/01/2024 Thru 10/31/2025)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 6: (11/01/2025 Thru 10/31/2026)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 7: (11/01/2026 Thru 10/31/2027)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

Option Year 8: (11/01/2027 Thru 10/31/2028)

Regular Meal	Religious Meal	Therapeutic Meal	Cadet Meal	Staff Meal

## **APPENDIX E**

### **LETTER OF TRANSMITTAL FORM**

## **APPENDIX E**

### **Letter of Transmittal Form**

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).  
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE  
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!**  
(N/A, None, Does not apply, etc. are acceptable responses.)

**RFP# 10-00000-20-00036**

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED ID#</b>	
<b>NM CRS#</b>	

**2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:**

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
<b>Name</b>			
<b>Title</b>			
<b>E-mail</b>			
<b>Telephone</b>			

\* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

**3. Use of subcontractors (Select one):**

- No subcontractors will be used in the performance of any resultant contract, OR  
 The following subcontractors will be used in the performance of any resultant contract:

\_\_\_\_\_  
 (Attach extra sheets, as needed)

**4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)**

\_\_\_\_\_  
 (Attach extra sheets, as needed)

**By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:**

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

\_\_\_\_\_, 20\_\_\_\_\_  
 Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)

## APPENDIX F

### ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to list a minimum of **three (3)** organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Yulastuti Wulandari at Yulastuti.Wulandari@state.nm.us by **September 17, 2020** MST/MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP # 10-00000-20-00036**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_  
(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. This Questionnaire is to be submitted to the State of New Mexico, **NM Corrections Department** via e-mail at:

Name: Yuliasuti.Wulandari  
Email: Yuliasuti.Wulandari@state.nm.us

Forms must be submitted no later than **September 17, 2020** and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings.

**For questions or concerns regarding this form**, please contact the State of New Mexico **Procurement Manager Kathleen Branchal** at **kathleen.branchal2@state.nm.us**. When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>Project description</b>	
<b>Project dates (start and end dates)</b>	

QUESTIONS:

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

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

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

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the Food Services scope and timelines?

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

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor? (Count Reports, Daily logs....etc.)

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?

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

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your Food Services and how would you rate them individually? Would you, please, 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/were you with the vendor's billing and invoicing accurately? (Have you experienced over billing or being billed in excess of what was actually delivered? If so, were invoices corrected timely?)

\_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:



**APPENDIX G  
INMATE COUNTS PER FACILITY**

Inmate Counts as of August 20, 2020		
Facility	Capacity	Count
NENMCF FACILITY TOTAL	628	419
PNM COMPLEX TOTAL	864	683
SNMCF COMPLEX TOTAL	768	672
WWCF COMPLEX TOTAL	442	381
CNMCF COMPLEX TOTAL	1221	821
RCC FACILITY TOTAL	340	257
SCC (Springer) FACILITY TOTAL	437	234
STATE RUN FACILITY INMATE TOTAL	4700	3457
PRIVATE FACILITIES		
LCCF FACILITY TOTAL	1293	1180
GCCF FACILITY TOTAL	590	533
OTERO COUNTY PRISON FACILITY TOTAL	647	532
NORTHWEST NEW MEXICO CORRECTIONAL CENTER	708	384
PRIVATE FACILITY INMATE TOTAL:	3238	2629
Total Female	879	615
Total Male	7059	5471
POPULATION TOTAL	7938	6086
Training Academy (approximate count per year)	2000	2000
<p>Training Academy will serve approximately 2000 cadets/employees a year.</p> <p>Private Facility numbers are included as NMCD has a right to relocate inmates from private to state run facility at its discretion. As mentioned, any facility additions or deletions will be negotiated with the contractor.</p> <p>These counts are approximate and may change at any time.</p>		