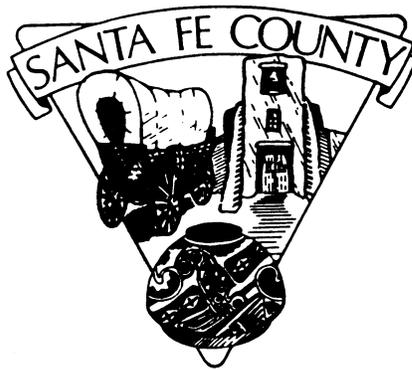


**SANTA FE COUNTY  
CORRECTIONS DEPARTMENT  
INVITATION FOR BIDS**



**IFB# 2017-0027-CORR/IC**

**DRUG TESTING KITS &  
LABORATORY SERVICES FOR THE  
ELECTRONIC MONITORING  
PROGRAM**

**AUGUST 2016**

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**ADVERTISEMENT**

**INVITATION FOR BIDS  
IFB# 2017-0027-CORR/IC**

**DRUG TESTING KITS & LABORATORY SERVICES FOR THE ELECTRONIC  
MONITORING PROGRAM**

The Santa Fe County Corrections Department is requesting bids for the purpose of procuring drug testing kits and laboratory services for the Electronic Monitoring (EM) Program. Bids may be held for ninety (90) days subject to all action by the County. Santa Fe County reserves the right to reject any and all bids in part or in whole. A completed bid package shall be submitted in a sealed container indicating the IFB title and number along with the Offeror's name and address clearly marked on the outside of the container. **All bids must be received by 2:00 PM MST on September 7, 2016, at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, NM 87501.** By submitting a bid for the requested services/items each Bidder is certifying that its bid complies with regulations and requirements stated within the Invitation for Bid.

EQUAL OPPORTUNITY EMPLOYMENT: All qualified bidders will receive consideration of contract(s) without regard to race, color, religion, sex, national origin, ancestry, age, physical and mental handicap, serious mental condition, disability, spousal affiliation, sexual orientation or gender identity.

Invitation for Bid packages will be available by contacting Iris Cordova, Senior Procurement Specialist Santa Fe County, Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, NM 87501, or by telephone at (505) 986-6337, or by email at [icordova@santafecountynm.gov](mailto:icordova@santafecountynm.gov) or on our website at [http://www.santafecounty.org/services/bids & contracts/current solicitations](http://www.santafecounty.org/services/bids&contracts/currentsolicitations)

**ANY BID PACKAGE RECEIVED BY THE PURCHASING DIVISION AFTER THE DATE AND TIME SPECIFIED ABOVE WILL NOT BE CONSIDERED AND WILL BE REJECTED BY SANTA FE COUNTY.**

Santa Fe County  
Purchasing Division  
Publish August 14, 2016

**BID INSTRUCTIONS**

1. All bids shall be submitted on the Santa Fe County “Invitation for Bids” forms provided herein.
2. All bids must be received no later than 2:00 PM (MST) on September 7, 2016, at the Santa Fe County Purchasing Division, 142 W. Palace Avenue (Second Floor), Santa Fe, NM 87501.

Hand Delivery or by Courier:

Iris Cordova  
Santa Fe County Purchasing Division  
142 W. Palace Avenue (Second Floor)  
Santa Fe, New Mexico 87501  
Telephone Number (505) 986-6337

3. Bids must be submitted in a sealed envelope or container and be clearly marked with the words: **Sealed Bid Enclosed, IFB# 2017-0027-CORR/IC**. Bids that are not submitted in a sealed envelope or container will not be accepted.
4. Filing time marked or stamped on the sealed envelope or container by the Santa Fe County Purchasing Division shall be the official time of receipt of the bid.
5. All bids shall remain sealed until the date and time specified in the “Advertisement” on Page 2 of this bid package.
6. To preclude possible errors and/or misinterpretations, bid prices shall be affixed in ink, legibly written or typed. In case of discrepancy, amounts stated in words shall govern.
7. Acknowledgement of Receipt Form

Interested bidders should hand deliver or return by facsimile or by registered or certified mail the "Acknowledgement of Receipt Form" that accompanies this document (See “Appendix A”) to have their organization placed on the procurement distribution list. The form should be legibly completed and signed by an authorized representative of the organization, dated and returned by close of business on **August 26, 2016**.

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

8. Campaign Contribution Disclosure Form

Bidders must complete and submit with their bid the Campaign Contribution Disclosure Form, “Appendix B”.

## GENERAL TERMS & CONDITIONS

1. **Bid Modification and Withdrawal:** After bid opening, no modifications of bids shall be permitted. A Bidder alleging a material mistake of fact after the opening of bids may be permitted to withdraw its bid upon written request prior to contract award. Bids may be withdrawn upon receipt of written request prior to the scheduled bid opening for the purposes of correction and/or change. Such modifications shall be properly identified and signed or initialed by the Bidders authorized representative or agent. Resubmission of the modified bid must be received within the specified time of bid opening in order to be considered.
2. **Method of Award:** Santa Fe County reserves the right to award a “Multiple Source Award” pursuant to Section 13-1-153 NMSA 1978, to the bidder(s) submitting the lowest responsive bid(s) meeting or exceeding specifications and terms and conditions for those items.
3. **Notification of Award:** The successful Bidder(s) shall be notified in writing within five (5) working days of contract award. The successful Bidder(s) will be issued subsequent purchase order(s) for goods and/or services as predicated by the Scope of Work, Specifications or supplemental agreement, if applicable, prepared by Santa Fe County.
4. **Delivery:** Time is of the essence for purposes of this solicitation. All damages resulting from late delivery shall be the responsibility of the bidder.

All items bid are to be delivered F.O.B. Santa Fe County, at a site to be determined by the County at the time a purchase order is released, except specifically set forth herein. In the event of failure of the bidder to deliver in accordance with this requirement, the bidder shall be liable to the County for late delivery penalties in the amount of \$100.00 per order each day the materials and services are delivered late.

At the option of the County Purchasing Manager, the County may invoke the default provisions of this contract for late performance in addition to the liquidated damages referred to above.

5. **Payment Terms:** All successful Bidders for items/services bid shall be subject to the terms of net thirty (30) days after receipt of the firm’s proper and acceptable invoice(s) by Santa Fe County.
6. **Applicable Taxes:** Bid prices offered by interested bidders are not to include applicable taxes. The County agrees to pay all applicable taxes where required. Santa Fe County is exempt from paying taxes on supplies and goods. The awarded Bidder may request a non-taxable transaction certificate (NTTC) from the Purchasing Division.
7. **Estimated Quantities:** All Bidders understand that any quantities stated in this IFB are estimated quantities and those actual quantities for the term of the contractor purchase may vary. Santa Fe County assumes no liability in the event actual requirements do not equal the stated estimated quantities. Actual purchases by the County for materials and/or services stated in this IFB are contingent upon available appropriated funding.

8. **Inspection and Acceptance:** Final inspection and acceptance of materials will be made by the County at the point of delivery. Non-conforming materials shall be rejected by the County and shall be removed by the bidder at its own risk and expense promptly upon notification of the non-conformance.
9. **Warranties:** The Bidder agrees that the goods and/or services furnished under this IFB shall be covered by most favored commercial warranties the Bidder gives to any customer for such goods and/or services and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause in any resulting order. The Bidder agrees not to disclaim warranties of fitness for a particular purpose and warranty of merchantability.
10. **Invoice Requirements:** The awarded Contractor(s) invoice shall be submitted in triplicate, duly certified, and contain at a minimum the following information to be acceptable to the County:
  - Purchase order number
  - Invoice number
  - Unit/Hourly/Discount prices (include extended totals)
  - Complete descriptions of goods and/or services rendered
  - Separate invoices shall be issued for each completed shipment, project or phase as determined in any previous order for such goods and/or services.
11. **Rights to Cancel:** The County reserves the right to cancel all or any part of any resulting order without cost to the County if the awarded Contractor(s) fails to meet material provisions of the order, and except as otherwise provided herein, to hold the awarded Contractor(s) liable for any excess costs associated with the contractor's default. The awarded Contractor(s) shall not be liable for any excess costs if failure to perform is due to causes beyond the control and shall not be the fault of negligence of the contractor. Such causes include, but are not restricted to, acts of God, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the County can determine that the goods or services to be supplied by the subcontractor were obtainable from other sources in sufficient time to meet the required delivery schedule. The rights and remedies of the County provided in this paragraph shall not be exclusive and are in addition to other rights provided under applicable laws.
12. **Bidders Certification:** In submitting a bid, the Bidder certifies that it has not directly or indirectly entered into actions that may restrict open and effective competition for items subject to this IFB by the County.

13. **Compliance with FCRA:** Bidders submitting bids shall be in compliance with the Federal Civil Rights Act of 1964 and Title VII of the Act (Rev.1979).
14. **Specifications:** The apparent silence of the specification as to any detail or apparent omission from them of detailed description concerning any point shall be regarded as meaning that only the best commercial practice is to prevail and only materials and workmanship of first quality are to be used.
15. **Rejection of Bids:** The County reserves the right to reject any and all bids in part or whole, to waive technicalities, make single or multiple awards without discussions with Bidders and to accept the offer it deems to be in the best interest of Santa Fe County, giving due consideration to prices, quality of goods or services, distribution and delivery facilities available and time of delivery.
16. **Interpretation of Bid Specifications:** Technical expertise may be required to provide materials that will conform to all applicable federal, state and local standards and to function as indicated in these specifications. The awarded bidder shall be responsible for ensuring that goods and/or services offered meet or exceed the stated criteria.

**ANY EXCEPTIONS TO THE SPECIFICATIONS SHALL BE CLEARLY NOTED AND EXPLAINED.**

17. **Interpretation of Meaning:** No interpretation of the meaning of the specifications or other documents will be made to any Bidder orally. Each request for interpretations shall be in writing to Iris Cordova, Santa Fe County, Purchasing Division at 142 W. Palace Avenue, Second Floor, Santa Fe, NM, 87501, through e-mail at [icordova@santafecountynm.gov](mailto:icordova@santafecountynm.gov) or via fax at (505) 989-3243, and to be given consideration must be received at least seven (7) working days prior to the date fixed for the receipt of bids.
18. **Communication:** Direct communication with the County technical representative or government sponsor of the requirement, other than through the aforementioned individual, may result in the elimination of the bidder's offer from consideration.
19. **IFB Corrections:** Any and all interpretations and supplemental instructions will be in the form of written addenda to the IFB which, if issued, will be e-mailed, faxed or other means determined by the County as reasonable to expedite this process to all prospective firms prior to the date fixed for the receipt of bids. A new bid opening schedule may be set to allow for modification and resubmission of bids. Failure of any bidder to receive any such addenda or interpretations shall not relieve such bidder from any obligation under their bid as submitted. **All addenda so issued shall become part of the contract documents and shall be acknowledged by the bidder on the bid sheet hereto attached.**
20. **Brand Names and Model Numbers:** Specifications in this IFB are not meant to be restrictive, but descriptive. Specifications contained herein reflect the minimum acceptable standards and are not intended to restrict competition. No substitute specifications may be included. Exceptions may be made only if required to match existing equipment, or conform to pre-existing conditions which preclude mismatch of sizes, styles or color. Substitutions

which would require additional delivery time, expense or modifications of the original design may be rejected.

21. **Item Description(s)**: All items on all pages of the specification are representative of the desired sizes and dimensions and as such are intended as guides to potential Bidders in the preparation of bids. Bids of equivalent items will be considered for award if (1) such items are clearly identified by manufacturer's name, brand, and model number, if any, in the offer; (2) descriptive literature or other such data is provided to show that the equivalent items are equal to the brand name; and (3) the County determines such items to be equal in all material respects to the salient specifications of the products required.
22. **Compatibility or Brand Name(s)**: Bidders shall clearly indicate that it is offering an "equal" product unless the Bidder is offering the brand name product(s) referenced in the inquiry. Should any specified brands or models be listed incorrectly, discontinued or improved, the Bidder shall note such changes in its responses and include the pertinent details regarding the change. In the event the item has been discontinued, the Bidder will be allowed to propose comparable goods or services along with the necessary supplemental documentation supporting their position.
23. **Evaluation and Determination of Product(s)**: The evaluation of bids and the determination as to equality of the product or service proposed shall be the responsibility of the County and will be based on information provided in the Bid and/or information reasonably available to the County.
24. **Resident Preference**: If a bidder wishes to be given preference in this procurement, it is required to submit its certificate or certificate number issued by the State Purchasing Agent with the bid prior to the bid submittal time and date deadline. Preference will not be given to a bidder who does not submit its certificate or certificate number that can be verified with the State Purchasing Office. The certificate must be under the bidder's business name as represented in its bid. The bidder's certificate must indicate whether the bidder is certified as a resident business, resident manufacturer, or New York State business enterprise. Application of preference by the County shall be provided as described at Section 13-1-21 (A)-(L) and Section 13-1-21.2 NMSA 1978, of the State Procurement Code.
25. **Two or more identical bids**: If two or more identical low bids are received, the County will apply the process described at Section 13.1.110 NMSA 1978, of the State Procurement Code.
26. **Collusion**: No bidder shall be interested in more than one bid. Collusion among bidders or the submission of more than one bid under different names by any firms or individual shall be cause for rejection of all bids in question without consideration.
27. **Protest Procedure**: Any Bidder or Offeror who is aggrieved in connection with a procurement may protest to the County Procurement Manager as set forth in Board of County Commissioners Resolution No. 2006-60. A copy of Resolution No. 2006-60 is available upon request.

28. **Consideration of Bids:** Bids received on time will be opened publicly and will be read aloud, and an abstract of the amounts of the Base Bids and Alternates or Bid Items, if any, will be made available to the Bidders. Each Bid shall be open to public inspection.
29. **Bid Security:** Bid Security in the amount of \$1,000 shall accompany the bid. Security may be in the form of a certified check or bank cashier's check made payable to Santa Fe County or a bid bond issued by a surety licensed to conduct business in the State of New Mexico, or other surety in form satisfactory to the County. The Bid Security of the successful bidder will be retained until the bidder has executed the Agreement, whereupon the bid security will be returned. If the bidder fails to execute and deliver the Agreement within ten (10) days of Notice of Award, the County may cancel the Notice of Award and the Bid Security of that bidder will be forfeited. **The Bid Security of any bidder whom the County believes to have a reasonable chance of receiving the award may be retained by the County until either the seventh day after the executed Agreement is delivered by the County to the Contractor and the required Contract Security is furnished, or the sixty-first day after the bid opening, whichever is earlier. Bid security of other bidders will be returned within thirty (30) days of the bid opening.**
- Bid Security in the form of checks, except the Bid Security of the two lowest Bidders, will be returned immediately following the opening and checking of the Bids. The retained Bid Security of the unsuccessful of the two lowest Bidders, if in the form of a check, will be returned within fifteen (15) days following the award of contract. The retained Bid Security of the Successful Bidder, if in the form of a check, will be returned after a satisfactory contract bond has been furnished and the contract has been executed. Bid Securities in the form of Bid Bonds will be returned only upon the request of the unsuccessful Bidder, but will be released by the County Purchasing Agent after the Notice to Award is sent by the County.
30. **Insurance Requirements:** At a minimum upon execution of the Agreement between the County and the Contractor, the Contractor shall furnish to the County, Certificates of Insurance naming Santa Fe County for the insurance coverage set forth in the sample price agreement attached herein, if applicable.
31. **Notice:** The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kick backs.
32. **Number of Bids Accepted:** Bidders shall submit only one (1) bid in response to this IFB.

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## SUPPLEMENTAL TERMS & CONDITIONS

1. **Intent of Specifications:** The following specifications are intended to describe the requirements by Santa Fe County. The County reserves the right to accept some minor variances in the approved goods and/or services offered by the bidders if such acceptance is determined to be in the best interest of the County.
2. **Qualified Bidders:** Bids may be accepted from vendors and/or factory authorized dealers who are able and willing to provide responsive service to the County. Bidders must be in a position to offer the lowest cost/highest effectiveness, completely meeting all established state and federal regulations or exceeding the minimum specifications contained herein. When additional equipment (components) are required to complete a bid package which is not usually supplied by the Bidder, such equipment shall be supplied by an authorized equipment supplier, but shall be the full responsibility of the Bidder. All Bidders may be required to include references from three (3) or more places of business that these items were sold to.
3. **Inspection of Work (If Applicable):** Representatives of the Santa Fe County Purchasing Division shall have access, at any reasonable time, to the Bidder's and Manufacturer's facilities for the purposes of inspection during the agreement period, to inspect the recording facility during its normal working hours. The costs associated with such inspection trips shall be borne by the County.
4. **Payment or Acceptance Not Conclusive:** No payment made under this Agreement shall be conclusive evidence of the performance of the contract, either in whole or in part, and that no payment made for the delivery of the items in whole or in part shall be construed as an acceptance of defective work or improper materials, and shall not relieve the Bidder from corrections of the defects. The final acceptance shall not be binding upon the County or conclusive, should it subsequently develop the Bidder had furnished inferior items or had departed from the specifications and/or the terms of the contract. Should such conditions become evident, the County shall have the right, notwithstanding final acceptance and payment, to cause the services to be properly furnished in accordance with the specifications (and drawings, if any) at the cost and expense of the Bidder.
5. **Order of Preference:** In the event of conflict between the Bid Instructions, General Terms and Conditions, Supplemental Terms and Conditions, and sample price agreement, the Supplemental Terms and Conditions shall prevail.
6. **Contract Terms and Conditions:** The Contract between the County and the Contractor shall follow the Terms and Conditions as stipulated throughout this Invitation for Bid. The County reserves the right to negotiate with a successful Bidder Terms and Conditions in addition to those contained in this IFB. The contents of this IFB, as revised and /or supplemented, the successful contractor's bid, and any additional Terms and Conditions (if applicable) as negotiated shall be accepted by the County and the Contractor as the contractual documents.

Should the bidder object to any of the County's Terms and Conditions, as stipulated throughout this Invitation, that Bidder must propose specific alternative language. The County may or may not accept the alternative language. General references to the Bidder's terms and conditions or attempts at complete substitutions are not acceptable to the County and will result in disqualification of the Bidder's bid. Bidders must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

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

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**SPECIFICATIONS**

1. OBJECTIVE DESCRIPTION:

Santa Fe County is requesting bids from firms of interest for the purpose of obtaining a drug testing kits and laboratory services for the Electronic Monitoring Program.

2. SCOPE OF WORK:

The Corrections Department, Electronic Monitoring Program provides services to the district and magistrate courts within Santa Fe County. The EM Program is an alternative to incarceration and allows the offenders live at home and continue to work and/or attend school on an approved schedule that is monitored electronically. This program serves both adult and juvenile offenders. The EM Program utilizes certain tools to assist them while monitoring the client in the program and utilizes certain tools of which regular drug testing is one of the tools. Santa Fe County requires the services of a firm that will provide drug testing kits and laboratory services to confirm the validity of the tests.

3. REQUIREMENTS and QUALIFICATIONS:

A. PERFORMANCE REQUIREMENTS **(SAMPLES OF EACH TEST KIT ARE REQUIRED TO BE SUBMITTED WITH THE BID)**

1. Specifications

a. All drug testing kits must comply with US Substance Abuse Administration and Mental Health Services Administration, US Department of Health and Human Services and be previously approved by the US Food and Drug Administration (FDA) for commercial distribution as a medical device.

b. The Offer must be able to provide testing devices for multiple drugs in one test. At a minimum, these drug testing kits must be available for the following drugs and levels:

Marijuana	50 NG/ML
Cocaine	300 NG/ML
Amphetamine	1000 NG/ML
Opiates	2000 NG/ML
Methamphetamine	1000 NG/ML
Methadone	300NG/ML
Benzodiazepine (BZD)	300 NG/ML
Buprenorphine (suboxone)	5 NG/ML

c. Each drug testing kit shall contain all elements necessary to complete the test.

- d. The drug testing kits shall not require electricity, special plumbing, instrumentation, calibration, a laboratory environment or refrigeration of reagents.
- e. All drug testing kits shall have an expiration date clearly marked on each kit and have a minimum shelf life of eighteen (18) months from date of manufacture. Santa Fe County shall receive drug testing kits at least twelve (12) months prior to the expiration date, or the kits may be rejected at the Contractor's expense.
- f. The drug testing kits must follow the current Substance Abuse and Mental Health Services Administration's (SAMHSA) cut-off levels of detection of positive drug screens.
  - i. The Opiate test kit must be able to detect morphine, codeine, hydrocodone, hydromorphone, oxycodone and 6-acetylmorphine.
  - ii. The THC (marijuana) test kit must not detect Motrin (ibuprofen) or Aleve (naproxen) and/or their metabolites.
- g. The drug testing kits must be able to be stored at room temperature.
- h. The drug testing kits must be completely portable and conveniently packaged for field use.
- i. The drug testing kits must not require any pretreatment of the urine sample prior to testing and must be able to be run on a sample immediately after collection. Also, the test must not require that sample reach room temperature unless it has been refrigerated. The test must not be affected by abnormal pH levels and also not be affected by diluted samples such as samples with creatinine levels lower than 40 mg/dL.
- j. The donor of a urine sample must not have any access to the testing device portion of a drug testing kit during the sample collection process.
- k. The drug testing kits must not require the use of a timing device and the drug testing kit should indicate when to interpret the results. A schematic or illustration showing positive and negative result interpretation must be on the device itself.
- l. The drug testing kits must be available for reading results in two (2) minutes and test results must be stable for a minimum of thirty (30) minutes.
- m. The test results must be easy to read with the test result interpretation of positive and negative clearly defined on the drug testing device. The drug testing device must contain the test result interpretation defined on the outer packaging only.
- n. The test results must be able to be photocopied or scanned creating either a paper or electronic permanent file copy for retention.

- o. The drug testing devices must be highly accurate and reliable with performance data comparable to gas chromatograph-mass spectrometer (GC-MS) testing.
  - p. The drug testing devices shall minimize false positive results caused by over-the-counter medications and their metabolites. Any over-the-counter medication and metabolites that may cause a false positive must be documented in a cross-reactivity list.
2. Additional Requirements
- a. The drug testing kits should include one (1) cup and one (1) lid; no stick testing.
  - b. The urine cups must be sealed, leakproof and available for shipping in same container, should it be necessary to ship to the laboratory for further confirmation.
  - c. Each drug testing kit shall include an identification label, temperature strip and a tamper evident seal for chain of custody. Other supplies required as part of this price agreement include pre-printed labels/chain of custody forms of various configurations, security seals, temperature strips, and pre-paid mailers – US Postal Service or express overnight service (overnight services require a minimum of 5 specimens) at no additional cost to Santa Fe County.
  - d. Proponents shall provide informational materials on drugs of abuse.
  - e. Shipping cost per case should include shipping and handling for supplies.
3. Support and Expertise Requirements. Proponent's Laboratory Personnel shall consist of:
- a. A scientist director for the drug testing laboratory who meets the following criteria:
    - i. Holds a M.S. or PH.D in pharmacology, toxicology or analytical chemistry;
    - ii. Has at least two years' experience in analytic toxicology (i.e., the analysis of biological materials for drugs or abuse) and appropriate training and/or forensic applications of analytic toxicology (i.e., able to provide court testimony); and
    - iii. Has documented scientific qualifications comparable to those of a person certified by the American Board of Forensic Toxicology or the American Board of Clinician Chemistry in Toxicological Chemistry. The scientist director is responsible for ensuring that there are sufficient personnel with adequate training and experience to supervise and conduct the work of the urine drug testing laboratory. The scientist director shall have medical

laboratory testing training in the sciences mentioned above with specific training in the theory and practice of the procedures used, including the recognition of aberrant results, and familiarity with quality control procedures.

- b. Supervisor to direct the analysts. The supervisor shall possess a Bachelor of Science Degree in Chemistry of the education and experience comparable to a medical technologist certified by the American Society of Clinical Pathologists (ASCP), or its equivalent. The supervisor shall have training in the theory and practice of the procedures used and an understanding of quality control concepts. Periodic verification of the supervisor's skills must be documented.
- c. The Contractor must be a medical laboratory certified by the Substance Abuse and Mental Services Administration (SAMHSA) or the College of American Pathologists for Forensic Urine Drug Testing (CAP-FUDT). Contractor must provide all a copy of all certificates and accreditations.
- d. Technicians or non-technical personnel who possess the necessary training and skills for the task assigned. Proponent shall offer in service continuing education programs to meet the needs of all laboratory personnel.
- e. Laboratory must be able to provide its Quality Assurance and Quality Control Plan upon request at any time during the term of the Agreement.
- f. The laboratory shall have a quality assurance program, which encompasses all aspects of the testing process including 1) specimen acquisition, 2) chain of custody, 3) security, and 4) reporting of results in addition to the screening and confirmation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each stop of the process.
- g. If required by the Santa Fe County, and deemed necessary in a court proceeding, the Contractor shall provide one day of expert testimonial and witness services per case event by qualified professionals with technical expertise as the prices listed in Attachment A.
- h. The Contractor must provide technical support twenty-four hours a day and seven days a week at no additional cost to Santa Fe County.

#### 4. Training

The Contractor must be able to provide direct support (training, technical advice, etc.) from the manufacturer of the testing devices identified herein to Santa Fe County at no additional cost to Santa Fe County. The Contractor must provide "train the trainer" courses to include, but is not limited to, basic drug testing training and training on current drug testing issues such as sample tampering, passive inhalation, drug detection periods and drug cross-reactivities.

5. Other Requirements

- a. Replacement of Damaged Products. The Contractor shall be responsible for replacing any item received in damaged condition at no cost to Santa Fe County. This includes all shipping cost for returning non-functional items to the Proponent for replacement.
- b. Delivery Requirements. The Contractor shall deliver the items in accordance with the contracted delivery times stated herein to Santa Fe County upon receipt of a Purchase Order. All orders must be shipped FOB Destination, Freight Prepaid and Allowed.
- c. Substitutions. Following award of the contract, no substitution of an awarded item will be permitted except in the case of natural disaster, item discontinuation, or the inability of a manufacturer to ship. The Contractor must provide documentation from the manufacturer to substantiate the occurrence of any of these aforementioned situations.

6. Test Results

- a. Initial and possibly confirmatory testing shall be conducted by the Contractor. Industry-standard test controls shall be utilized. Results shall be transmitted by the Contractor to the Santa Fe County Electronic Monitoring Program staff members electronically via e-mail within five (5) working days of specimen receipt.
- b. Test results shall also be available within twenty-four hours of transmitted results through an electronic medical record system accessible 24/7 with the ability to print laboratory results. Appropriate safeguards shall be used to ensure confidentiality of records by limiting access to authorized individuals.

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**BID FORM**

Project: Drug Testing Kits & Laboratory Services for the EM Program IFB No. IFB# 2017-0027-CORR/IC

Bidder Information:

This Bid is submitted to:

Name:

**Santa Fe County Purchasing Division**

Address:

**142 W. Palace Ave. (2<sup>nd</sup> Floor)**

**Santa Fe, New Mexico 87501**

**Attn: Iris Cordova**

Having read the Santa Fe County Bid Instructions and General Terms and Conditions and examined the specifications sheet(s) for the Invitation for Bids reference **IFB# 2017-0027-CORR/IC** we hereby submit the attached firm offer for which will remain open for a period not to exceed ninety (90) days in accordance with all terms and conditions represented in this solicitation for:

Drug Testing Kits & Laboratory Services for the EM Program

Signature:

Name (typed or printed):

\_\_\_\_\_

\_\_\_\_\_

Title:

Firm Name:

\_\_\_\_\_

\_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

Resident Preference Number: \_\_\_\_\_

(Attach copy of Preference Certificate to Bid)

Business License Number: \_\_\_\_\_

(Attach copy of Business License to Bid)

Bid Security,

Required Samples

Liability Insurance required,

Received addenda #'s \_\_\_\_\_ & \_\_\_\_\_ & \_\_\_\_\_ when issued.

**BID SHEET**

**IFB# 2017-0027-CORR/IC  
Drug Testing Kits & Laboratory Services for the EM Program**

Please offer your best price for all (products/services) listed below. **Include signature at the bottom as stated.** Be advised that award may be made without discussion with Bidders on offers received. **Price shall not include state gross receipts or local tax.** Such tax shall be added at the time of invoicing, at the current rates, and added as a separate item.

**SAMPLES OF EACH TEST KIT ARE REQUIRED TO BE SUBMITTED WITH THE BID.**

Bidder's Organization Name: \_\_\_\_\_

Item	Qty	Item and Description	units per case/lot:	Unit Price	Extended Price
1	1	5 Panel Drug Test			
2	1	6 Panel Drug Test			
3	1	7 Panel Drug Test			
4	1	9 Panel Drug Test			
5	1	12 Panel Drug Test (enclosed cup that does not require dipping)			
6	1	Suboxone Drug Test			
7	1	Mouth Swabs			
8	1	One-Step Synthetic Cannabis Drug Test			
9	1	Mouthpiece for Alco Mate/Alco Scan Series			
10	1	Prism Component (Sensor Module –one sensor good for 250 breath tests)			
11	1	Laboratory Confirmation	EACH		
12	1	Court Appearance to Defend Positive Drug Screen to include Travel, Lodging, and Mileage	PER DAY		
13	1	Court Appearance (Telephonic)	PER DAY		
14	1	Affidavit of Test Results	EACH		
**Total Combined Price (for purposes of determining the lowest bid only)**					

\*\*TOTAL BID AMOUNT: \_\_\_\_\_ excluding GRT

BIDDER'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**APPENDIX A**

**ACKNOWLEDGEMENT OF RECEIPT FORM**

**Drug Testing Kits and Laboratory Services for the Electronic Monitoring Program  
IFB# 2017-0027-CORR/IC**

An Acknowledgement of Receipt Form should be signed and submitted to the Procurement Division (see contact information below). Only Bidders who elect to return this completed form, with the intention of submitting a bid, will receive copies of County's written responses as well as IFB Addenda, if any are issued.

**BIDDER:** \_\_\_\_\_

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

**TITLE:** \_\_\_\_\_ **PHONE NO:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_ **FAX NO:** \_\_\_\_\_

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

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

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

**The above name and address will be used for all correspondence related to the IFB. Bidder does / does not (CIRCLE ONE) intend to respond to this IFB.**

Iris Cordova  
Santa Fe County  
Purchasing Division  
142. W. Palace Avenue (Second Floor)  
Santa Fe, NM 87501  
Telephone: (505) 986-6337  
Fax: (505) 989-3243  
Email: [icordova@santafecountynm.gov](mailto:icordova@santafecountynm.gov)

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office.

“Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“**Family member**” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

“**Person**” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“**Prospective contractor**” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS:

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

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

Name of Applicable Public Official: \_\_\_\_\_

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

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

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

Purpose of Contribution(s) \_\_\_\_\_  
\_\_\_\_\_



## APPENDIX C

### SAMPLE PRICE AGREEMENT SANTA FE COUNTY PRICE AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between **Santa Fe County, New Mexico**, a political subdivision of the County of the State of New Mexico (hereinafter referred to as “the County”) and \_\_\_\_\_, a Corporation authorized to do business in Santa Fe County (hereinafter referred to as “the contractor”)

#### IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

#### 1. DEFINITIONS

- A. **“Using department”** shall mean a department or Elected Official’s Office of Santa Fe County.
- B. **“Purchase Order”** shall mean a fully executed Purchase Document issued by the Santa Fe County Purchasing Department that specifies the items to be provided by the Contractor under the terms of the Price Agreement.
- C. **“Price Agreement”** means this indefinite quantity Price Agreement which requires the Contractor to furnish items to the using department which issues a purchase order.

#### 2. GOOD TO BE PROVIDED

- A. **Goods Listed on Exhibit A.** Certain departments of the County may issue orders for purchase of the items described herein. The item ordered must be listed on the Exhibit A to this Agreement. All orders issued hereunder must bear the order number and the number of this Price Agreement.
- B. **Quantities.** It is understood that this is an indefinite quantity price agreement and the County may order any quantity of the items listed on Exhibit A. No guarantee or warranty is made or implied, by either the County or the using department that any order for any definite quantity will be issued under this Price Agreement. The Contractor is required to accept the order and furnish the items when ordered.
- C. **Specifications.** Items furnished hereunder shall conform to the requirements of the specifications provided in the Invitation for Bid. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), quantities, and price(s). Any items provided pursuant to this Price Agreement must meet or exceed the manufacturer’s specifications.

**D. Shipping and Billing Instruction.**

1. The Contractor shall ship the items in accordance with the County's instructions. The Contractor shall enclose a packing list with each shipment listing the order number, purchase order number, and the commercial part number (if any) for each item. Unless otherwise designated by the County, the Contractor shall ship all products FOB Destination. Except for loss or damage directly attributable to the negligence of a procuring department, the Contractor shall bear all risk of loss or damage until products have been accepted by the using department. Destination charges shall be included in the product price.
2. The Contractor may impose shipping and handling charges for enhanced delivery services (overnight courier service, second-day courier service or delivery by messenger service). Such enhanced delivery charges shall be pre-paid by the Contractor and billed as a separate item at actual cost. The Contractor shall advise the procuring department of any enhanced delivery charges prior to the acceptance of the purchase order.
3. Whenever a using department does not accept any product and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned.
4. The Contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the using department.
5. Unless otherwise agreed upon by the using department, the Contractor shall be responsible for the pick-up of returned items.
6. Time is of the essence for the purposes of this Agreement. All damages resulting from late delivery shall be the responsibility to the Bidder. In the event of failure of the Bidder to deliver in accordance with this requirement, the Bidder shall be liable to the County for liquidated damages in the amount of \$100.00 per order per each day the items are delivered late.

**E. Delivery Tickets.** The County's purchasing document number and the Contractor's name, using department's name and location shall be shown on each packing and delivery ticket, package, bill of lading and other correspondence in connection with the shipments. The user's count will be accepted by the Contractor as final and conclusive on each shipment that is not accompanied by a packing ticket.

- F. Price.** Prices listed in Exhibit A for each item shall be the price for that item as listed in the submitted bid form. In the event of a product cost increase as escalation request will be reviewed by this office on an individual basis.

### 3. PAYMENT

All payments under this Price Agreement are subject to the following provisions.

- A. Inspection.** Final inspection and acceptance of all items ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Contractor's risk and expense, promptly after notice of rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the using department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the using department. Unless otherwise agreed upon between the using department and the Contractor, within thirty (30) days from the receipt of items, the using department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the using department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.
- C. Issuance of Orders.** Only written, signed and properly executed purchase orders are valid under this Price Agreement.
- D. Invoices.** The Contractor may submit invoices for payment no more frequently than monthly. The Contractor invoice shall be submitted in triplicate, duly certified and shall contain the following information: order number; description of supplies or services; quantities; unit price; and extended totals. Separate invoices shall be rendered for each and every complete shipment. Invoices must be submitted to the using department and not the Central Purchasing Office.
- E. Payment for Invoices.** Upon written certification from the using department that the items have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days. If the payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the Price Agreement to the Contractor at a rate of 1.5% per month. Payment shall be made to the Contractor's designated mailing address.
- F. Tax Note.** Applicable gross receipts taxes or local option taxes shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this agreement shall be the Contractor's sole

responsibility and must be reported under the Contractor's federal and State of New Mexico tax identification number(s). If a using department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the using department shall provide the Contractor with written evidence of such exemption(s).

#### 4. TERM

THIS PRICE AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE PARTIES. The term of this Agreement shall be \_\_\_years. The County, at its sole option, may renew this Price Agreement on the same terms and conditions for \_\_\_ additional \_\_\_year term. This Price Agreement, including all extensions and renewals, shall not exceed \_\_\_ years in total duration.

#### 5. DEFAULT

- A. The failure of the Contractor to perform shall create a default pursuant to this Price Agreement. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement without cost to the County if the items fail to meet the requirements of this Price Agreement. The Contractor may be excused from performance under this Price Agreement if the Contractor's 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 limited to, acts of God or the public enemy, acts of the County 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 County shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the subcontractor to meet the required delivery schedule.
- B. The County shall cancel all or any part of any resulting order without cost to the County if the Contractor fails to meet material provisions of the order; the Contractor shall be liable for any excess costs associated with such a default.

#### 6. TERMINATION

- A. **For Convenience.** This Price Agreement may be terminated by the County upon written notice to the Contractor thirty (30) days before the proposed date of termination. Notice of Termination of the Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS.
- B. **For Cause.** Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching

party has not corrected the breach or, in the case of a breach which cannot be corrected within thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**7. AMENDMENT**

This Price Agreement may be amended by mutual agreement of the County and the Contractor upon written notice by either party to the other. Any such amendment shall be in writing and signed by both parties hereto. An amendment to this Price Agreement SHALL NOT AFFECT ANY OUTSTANDING ORDERS issued prior to the effective date of the amendment as mutually agreed upon, and as published by the County Purchasing Manager. Amendments affecting prices are not allowed unless specifically provided in the bid documents.

**8. STATUS OF CONTRACTOR**

The Contractor and Contractor's agents and employees are independent Contractors for the department and are not employees of Santa Fe County. The Contractor and Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of County vehicles or any other benefits afforded to employees of Santa Fe County as a result of this agreement. The Contractor acknowledges that all sums received hereunder are personally responsible by it for income tax purposes as self-employment or business income and are liable for self-employment tax.

**9. ASSIGNMENT**

- A. Neither this price agreement nor any orders placed under this price agreement, nor any interest therein, nor claim there under, shall be assigned or transferred by the Contractor, except as set forth in subparagraph (B) below or as expressly authorized in writing by the County purchasing manager. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this price agreement.
- B. Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the County as to goods, services and materials purchased in connection with this bid are hereby assigned to the County.

**10. NON-COLLUSION**

In signed this agreement, the Contractor certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Agreement.

**11. INSPECTION OF PLANT**

The County Purchasing Manager may inspect, at any reasonable time, the part of the Contractor's or any subcontractor's plant or place of business which is related to the performance of this Price Agreement.

**12. COMMERCIAL WARRANTY**

The Contractor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such items, and that the rights and remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this order. Contractor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability and fitness for a particular purpose.

**13. CONDITION OF PROPOSED ITEMS**

All proposed items are to be NEW and of most current production, unless otherwise specified.

**14. RECORDS OF AUDIT**

During the term of this agreement and for three years thereafter, the Contractor shall maintain detailed records pertaining to the services rendered and products delivered. These records shall be subject to inspection by the department, the County and State Auditor and other appropriate County and federal authorities. The department shall have the right to audit billings both before and after payment. Payment under this agreement shall not foreclose the right of the department to recover excessive or illegal payments.

**15. APPROPRIATIONS**

The terms of this Price Agreement and any orders placed under it are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this agreement. If sufficient appropriations and authorization are not made, this Price Agreement and any orders placed under it shall terminate upon written notice being given to the Contractor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

**16. RELEASE**

The Contractor, upon final payment of the amount under this agreement, releases the County, its Elected Official, officers, employees, agents and attorneys, from and against

all liabilities, claims and obligations whatsoever arising from or under this agreement. The Contractor agrees not to purport to bind Santa Fe County, unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**17. CONFIDENTIALTY**

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

**18. PRODUCT OF SERVICE: COPYRIGHT**

All materials developed or acquired by the Contractor under this agreement shall become the property of Santa Fe County and shall be delivered to the using department no later than the termination date of this agreement. Nothing produced, in whole or in part, by the Contractor under this agreement shall be subject to all application for copyright by or on behalf of the Contractor. The original and one copy of all materials, work papers, meeting notes, or other documents produced by the Contractor shall be indexed and placed in appropriately labeled binders and delivered to the using department at conclusion of the agreement.

**19. CONFLICT OF INTEREST**

The contractor warrants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this agreement. The Contractor shall comply with any applicable provisions of the New Mexico Government Conduct Act and the New Mexico Financial Disclosures Act.

**20. APPROVAL OF CONTRACTOR REPRESENTATIVES**

The department reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the department, serving the needs of the County adequately.

**21. SCOPE OF AGREEMENT, 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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

**22. NOTICE**

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

**23. EQUAL OPPORTUNITY COMPLIANCE**

The Contractor shall abide by all federal and state laws, rules and regulations, and all applicable executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations, and executive orders of the governor of the State of New Mexico, the Contractor agrees to assure that no person shall on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, 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 to be not in compliance with these requirements during the life of this agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**24. INDEMNIFICATION**

The Contractor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the department, its officers or employees.

**25. APPLICABLE LAW**

This agreement shall be governed by the laws of the State of New Mexico.

**26. INCORPORATION BY REFERENCE AND PRECEDENCE**

This agreement is derived from the Invitation for Bid, including any written Addenda, and the Contractor's bid, Exhibit A. 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 preference: (1) amendments to the Price Agreement in reverse chronological order; (2) the Price Agreement, including the scope of work

**27. WORKER'S COMPENSATION**

The Contractor shall comply with State laws and rules applicable to worker's compensation benefits for its employees. If the Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this agreement may be terminated.

**28. INVALID TERM OR CONDITIONS/SEVERABILITY**

The provision of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the Agreement, which can be given effect without the invalid provision.

**29. 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.

**30. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNIFICATION**

- A. The contractor shall defend, at its own expense, the County from and against any claim that any item provided under this agreement infringes any patent, copyright to trademark in the United States of Puerto Rico, and shall pay all costs, damages and attorney's fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the department based upon Contractor's trade secret infringement relating to any items provided under this agreement, the Contractor agrees to reimburse the County for all costs, attorney's fees and amount of the judgment. To qualify for such defense and or payment, the department shall:
- i. give the Contractor prompt written notice within forty-eight (48) hours of any claim;
  - ii. allow the Contractor to control the defense of settlement of the claim; and
  - iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any item becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall at its option and expense:
- i. provide the County the right to continue using the item and fully indemnify the County against all claims that may arise out of the County's use of the item;
  - ii. replace or modify the item so that it becomes non-infringing; or
  - iii. accept the return of the item and refund an amount equal to the value of the returned item, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any item modified by the department to the extent such modification is the cause of the claim.

- C. Nothing produced, in whole or in part, by the Contractor under this agreement shall be the subject of an application or copyright by or on behalf of the Contractor.
- D. The agreement paragraph titled “patent, copyright, trademark, and trade secret indemnification shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall also survive termination of this agreement.

**31. SURVIVAL**

Each party agrees to protect confidential information and information identified as sensitive, proprietary, patent, copyright and/or trade secret data of the other. This protection will survive completion and/or termination of this Agreement and each party agrees not to disclose this data unless under the order by a court of appropriate jurisdiction or information becomes public knowledge.

**32. NOTICES**

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

To the County:

Santa Fe County Legal Office  
102 Grant Avenue  
Santa Fe, New Mexico 87501

To the Contractor:

Name  
Address  
City, State, Zip Code

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement. The carrier for mail delivery and notices shall be the agent of the sender.

**33. AMENDMENTS**

This Price Agreement shall only be amended by written amendment executed by the parties.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first written above:

**SANTA FE COUNTY:**

\_\_\_\_\_  
Miguel M. Chavez, Chair  
Santa Fe County Board of County Commissioners  
Date \_\_\_\_\_

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar,  
Santa Fe County Clerk  
Date \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Gregory S. Shaffer  
Santa Fe County Attorney  
Date \_\_\_\_\_

Finance Department Approval:

\_\_\_\_\_  
Carole H. Jaramillo  
Santa Fe County Finance Director  
Date \_\_\_\_\_

**CONTRACTOR:**

\_\_\_\_\_  
Date \_\_\_\_\_

By: \_\_\_\_\_  
(Print Name)

Its: \_\_\_\_\_  
(Print Title)