experience working with vocational rehabilitation agencies.

(b) Increased knowledge about how these practices relate to employer success in hiring, retention, and promotion of individuals with disabilities. Applicants must propose strategies to collect information about these practices and outcomes directly from employers, taking into account that it can be difficult to collect information about employer practices and outcomes. In addition, applicants are encouraged to use existing databases such as those maintained by the Equal Employment Opportunity Commission, the Small Business Administration, the Office of Federal Contract Compliance Programs, and disability insurance providers.

(c) Increased incorporation of findings into practice and policy. The RRTC must contribute to this outcome by:

(1) Collaborating with employer groups to develop, evaluate, or implement strategies to increase utilization of positive practices identified by the RRTC.

(2) Conducting training and dissemination activities to facilitate the utilization of research findings in employment and policy settings.

In addition, this RRTC must collaborate with:

(1) Relevant Rehabilitation Services Administration grantees, such as the 10 regional Technical Assistance and Continuing Education projects.

(2) Relevant grantees and programs in the Department of Labor, including the Office of Disability Employment Policy's National Technical Assistance, Policy, and Research Center for Employers.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new RRTC will advance research to improve the lives of individuals with disabilities. The new RRTC will disseminate and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 13, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11877 Filed 5–17–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plan previously submitted by New Mexico.

DATES: This notice is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone (202) 566–3100 or 1 (866) 747–1471 (toll-free).

Subit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty States, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the second revision to the state plan for New Mexico.

The amendment to New Mexico's state plan include securing a custom, hardware, firmware, and software maintenance services information technology contractual agreement for all state approved voting machines and other ancillary election equipment. In

accordance with HAVA section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. New Mexico confirms that its amendments to the state plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from May 18, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the State Election Official listed below.

Chief State Election Official

The Honorable Mary Herrera, Secretary of State, New Mexico State Capitol, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico 87503, Phone: (505) 827–3600 or 1 (800) 477–3632, Fax: (505) 827–8403.

Thank you for your interest in improving the voting process in America.

Dated: May 10, 2010.

Thomas R. Wilkey,

Executive Director, Election Assistance Commission.

BILLING CODE 6820–KF–P

MARY HERRERA
NEW MEXICO
SECRETARY OF
STATE

NEW MEXICO STATE PLAN
FY 09-10

As required by Public Law 107-252
Help America Vote Act 2002, Section 253 (b)

Table of Contents

Executive Summary 3

State Plan FY 2009/2010 – Introduction 4-5

Background 5-6

Voting System Standards 6-15

1) Ballot Correction ..... (8)
2) Manual Audit Capacity ..... (8)
3) Disability Access ..... (8-9)
4) Alternative Language Accessibility ..... (9-10)
5) Error Rates and ABD Definition of Vote ..... (10)
6) Provisional Voting and Voting Information ..... (10-11)
7) Computerized Statewide Voter Registration System ..... (11-12)
8) Requirements for Voters Who Register by Mail ..... (12)
9) Training and Voter Outreach Education ..... (12-15)

Previous Year State Plan (FY 2008/2009) 15-16

Changes to State Plan from Previous Fiscal Year – FY 2009/2010 State Plan Summary 16-18

1) Funding Distribution and Controls ..... (16)
2) Planned Projects ..... (16)
3) Performance Goals and Measures ..... (17)
4) Ongoing Maintenance Plan ..... (17-18)
5) Audits and Internal Controls ..... (18)
6) Maintenance of Effort ..... (18)

Administrative Complaint Procedure (FY 2008/2009) 19-22

Attachment A: Information Technology Agreement Template for Custom Hardware, Firmware and Software Maintenance Services Contract .....

Attachment B: Proof of 30-Day Announcement .....

Attachment C: Requisition .....

EXECUTIVE SUMMARY

As New Mexico's Secretary of State, I am responsible for overseeing the entire election process throughout the State of New Mexico. This includes maintaining a computerized database of statewide registered voters, testing, evaluating and certifying voting machines, and approving county-produced precinct boundary maps.

We are blessed to live in a nation where we have the freedom to vote. This precious right has been won and protected by our brave men and women who have fought to defend our liberty.

Indeed, there is no greater privilege of freedom extended to the citizens of New Mexico than the right to vote and to elect the officials who represent them at all levels of government.

As the Chief Election Officer for the state, we work diligently to remove obstacles in an effort to assist and encourage the citizens of New Mexico to vote.

As part of the Help America Vote Act (HAVA) of 2002, we have taken great effort to continue to make the voting process more accessible and user friendly for voters. It has been an honor to be involved in the implementation of projects that further improve the election process. This State Plan is a living document and working plan of action that will continue to evolve. Through its implementation, it will empower New Mexico voters to voice their electoral preference in an environment that ensures the independence and integrity of their vote.

It is my pleasure, and that of the New Mexico Secretary of State's Office, to continue to improve the election process.

This document provides an update of New Mexico's commitment to the empowerment of its voters that synthesizes integrity, accessibility and self-determination.

Sincerely,

Mary Herrera
Secretary of State

NEW MEXICO SECRETARY OF STATE

FY 09/10 STATE PLAN

INTRODUCTION

This New Mexico State Election Plan for FY 09/10 is proposed in accordance with Public Law 107-252, Help America Vote Act 2002, Section 253 (b), as enacted in October 2002 to assist states in the administration of federal elections. This law implements minimum standards for states and units of local government with the responsibility for the ***administration of federal elections.***

Since elected to a four-year term, on January 01, 2007, Mary Herrera, New Mexico Secretary of State, has continued the process of working with county clerks, presiding judges, precinct officials, election volunteers, federal and state agency representatives, legislators, agencies representing persons with disabilities, veterans, senior citizens, youth organizations, educators, voters, the general public, and various education and news reporting media for informing and improving the election system and polling site accessibility as stipulated under Title I, Section 101, Title II, Section 251, Section 261 & Title III, Sections 302, 303 and 304.

This proposal is in response to the FY 2009/2010 HAVA, Title II, Section 251 grant. The maximum amount of funds being made available is $613,898 with a five percent match ($32,310) from the state for a total of $646,208.

The intent of this initiative is to secure a contract agreement for a one-year period for the provision of hardware, firmware and software maintenance and support services for all of the state's voting machines and other election equipment, including the ADA compliant AutoMARK™ Voter Assist Terminal (ancillary election equipment).

The designation for this initiative is necessary due to the severe budget cuts being experienced in the State of New Mexico. Furthermore, the State of New Mexico is mandated under federal and state election laws to provide coverage for maintenance and support services for all voting machines and other election equipment, including AutoMARKS™ in order to ensure that the voting equipment is calibrated and in proper working condition for federal and statewide elections.

As a result, the New Mexico Secretary of State met with the New Mexico HAVA Task Force on Monday, August 31, 2009 to explain the situation and to obtain the committee's input and approval. The New

Mexico Secretary of State also met with the 33 County Clerks on Monday, October 05, 2009, to consider a contract agreement for the provision of hardware, firmware and software maintenance and support services, which includes all voting machines and other ancillary election equipment. The County Clerks reviewed and approved the plan. On behalf of the 33 County Clerks, the Bernalillo County Clerk agreed to provide the five percent match for the maintenance and support services for the voting machines and other ancillary election equipment. Their involvement is necessary to the initiative since they are the 'chief election officials' in their respective counties and also serve as the custodians for the voting machines and other ancillary election equipment.

Note:

- The committee made up of the 33 County Clerks, as identified above, does not replace the New Mexico HAVA Task Force, the purpose of which is to assist the Secretary of State in developing the State Plan, as discussed below.

- Pursuant to HAVA, Section 255(a), "The chief state election official shall develop the HAVA State Plan under this subtitle through a committee of appropriate individuals, including the chief election officials of the two most populous jurisdictions within the State, other local election officials, stakeholders (including representatives of groups of individuals with disabilities), and other citizens, appointed for such purpose by the chief state election official." Furthermore, when funding becomes available, the New Mexico Secretary of State shall convene a meeting with the committee to consider recommendations for the State Plan initiatives.

The following are the members of the committee, also known as the New Mexico HAVA Task Force:

- Robert Adams, Bernalillo County Chief Deputy Clerk
- Anthony Alarid, Governor's Commission on Disability
- Anne Arrasmith, Bernalillo County Clerk's Office
- Evelyn Blair, New Mexico Commission for the Blind
- Melanie Carver, Attorney General's Office & Legal Counsel
- Bernadine Chavez, Disability Rights of New Mexico
- Tom Day, Disability Rights of New Mexico
- Georgina Dimas, New Mexico Secretary of State's Office
- Lynn J. Ellins, Doña Ana County Clerk
- Kelli Fulgenzi, New Mexico Secretary of State BOE Administrator
- Mary Herrera, New Mexico Secretary of State
- Mario Jimenez, Doña Ana County Chief Deputy Clerk
- Doris McBride, Private Citizen
- Jim Parker, Governor's Commission on Disabilities
- Elizabeth Peterson , Brain Injury Advisory Council
- Pat Putnam , Developmental Disability Planning Council
- Charlene Rodriguez, Private Citizen
- A.J. Salazar, New Mexico Secretary of State BOE Director
- Art Schreiber, Advocate
- Maggie Toulouse Oliver, Bernalillo County Clerk
- Gregg Trapp, New Mexico Commission for the Blind
- Don Francisco Trujillo II, New Mexico Deputy Secretary of State
- Manny F. Vildasol, New Mexico Secretary of State's Office

BACKGROUND

Since statehood, the Constitution and Statutes of the State of New Mexico require that all election materials be provided in both the English and Spanish languages. Over the past 25 years the State of New Mexico has continued to improve its election process.

Beginning in the mid-1980s, the State of New Mexico began its transition from lever voting machines to direct recording electronic and optical scan voting systems. In the late 1980's, the State of New Mexico installed a statewide automated records system, including an integrated voter registration system. In 1999, the New Mexico State Legislature appropriated funding for the Office of the Secretary of State to begin the process of the installation of a new and more interactive system to incorporate voter registration and voter management features. Subsequently, the new system is now installed in 32 of the state's 33 counties in a continuous effort to meet HAVA requirements. In recognition of the cost of voting systems acquisition, the state established the Voting Machine Revolving Fund, a no-interest funding mechanism for counties to purchase new systems. Gradually, the debt ceiling of the fund has been raised to $6.5 million, but due to the state's budget crisis, the fund was drawn upon by the legislature and only $386,031 remains in the fund.

In 1991, four years prior to the effective date of the National Voter Registration Act, New Mexico began registering voters at Motor Vehicle Division (MVD) site offices. At the present time, voter registration services are being provided to the public via third-party agents, public libraries, universities, colleges and designated state agency-based site offices, whose primary mission is to provide assistance to the general public and services to persons with disabilities.

Since 1993, the legislature has recognized the need to expand opportunities for voting. As such, "early voting" activities were enacted, beginning three weeks prior to an election.

New Mexico adopted the Election Assistance Commission's Voting Systems Standards in 1993 requiring that all systems be certified by the state and independently tested, to meet federal performance and test standards.

In 1998, New Mexico began the use of an electronic canvassing system to ensure accuracy of results and elimination of manual entry and mathematical errors. New Mexico utilizes a triple-audit of election returns. After counties audit the canvass, the state audits each county's returns through a system of duplicate returns forwarded directly from the precinct to the Office of New Mexico Secretary of State. After the Bureau of Elections completes its audit, independent auditors contracted by the state re-examine the returns. Through this triple audit process, the State of New Mexico can ensure that the integrity and accuracy of its canvass process is maintained at the highest level.

In 2006, the state changed to an all paper ballot system. Presently, New Mexico's Election Code is uniformly applied in all 33 counties. The code requires that a uniform ballot be used throughout the entire state. In order to maintain uniformity, the Office of the Secretary of State approves all ballot content and layout for federal and statewide races.

VOTING SYSTEM STANDARDS

Section 301 of the Help America Vote Act sets forth specific standards for voting systems. HAVA requires each voting system to: 1) permit voters prior to casting their ballot to verify the candidates or questions they have voted for or against; 2) allow voters to change or correct their vote in a private and independent manner; 3) inform voters if they have over-voted (voting for more than one candidate for a single office); 4) inform the voter of the opportunity to receive a replacement ballot; 5) produce a paper record with a manual audit capability; 6) be accessible to people with disabilities through the use of at least one ADA compliant voting system located at each polling site; 7) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965 via the ES&S AutoMARK™ voter assist terminal, a breakthrough ballot-marking technology that allows voters with disabilities or special needs to mark a ballot privately and independently. The technology also provides language assistance to voters who are more comfortable speaking a different language or who need help to better understand written instructions; and 8) comply with error rates established under the provisions of HAVA. In addition, states are required to adopt uniform and non-discriminatory standards defining what constitutes a vote and what will be counted as a vote for each voting system.

The paper ballot voting system in the State of New Mexico provides a ballot so voters may verify their ballot before it is cast and counted.

Ballot Correction

HAVA requires that states using paper ballot voting systems to establish a voter education program specific to each voting system notifying voters of the effect of over voting. This notification requirement includes providing voters with instructions on how to correct the ballot.

The State of New Mexico has both statutory language and administrative procedures in place for paper ballot voting systems at the polls. Additional instruction signs are placed at all polling sites. Further, the Secretary of State posts instruction materials for all voting systems on its website and also encourages the County Clerks to post the information on their websites.

Manual Audit Capacity

New Mexico election law mandates that every voting system have a manual audit capacity and the ability to produce a paper record. As a paper-ballot state, this requirement is self-implementing. Other statistical information required is election date, precinct number, polling site, number of voters, votes cast, names of precinct board members and opening and closing of polling sites.

Disability Access

HAVA requires voting systems be accessible to voters with disabilities and citizens in need of special assistance. There must be the same opportunity for access, privacy, participation and independence other voters enjoy.

The State of New Mexico has used HAVA federal funding to purchase one ADA compliant voting system, called the AutoMARK™, with audio assist for each polling site throughout the State.

One of the highest priority items of this purchase included training counties in programming and maintenance. A voter education program was developed to ensure that voters with disabilities are fully educated in the use of the new ADA compliant voting systems. Precinct official training programs were developed and implemented in order to provide election workers with the necessary skills to operate the system for elections.

New Mexico has long recognized the importance of providing accessible polling sites as part of its voter outreach efforts. Since 1979, the State of New Mexico has mandated that all polling sites be accessible to voters with disabilities or citizens with special needs. In order to maintain this requirement, a physical inspection of each polling site is conducted by County Clerks prior to each election. To further ensure compliance and uniformity, the Office of the New Mexico Secretary of State has provided instructional materials to County Clerks to enable them to evaluate polling site accessibility. In accordance with this program, the State continues to collaborate with the New Mexico HAVA Task Force in updating all instructional materials and encouraging those with disabilities to exercise their right to vote in a private and secure manner. A variety of methods, including contracts with independent consultants and local disability advocacy groups are utilized to ensure each polling site in New Mexico has been surveyed for disability access. A continuous effort is extended to bring all polling sites into ADA compliance.

Alternative Language Accessibility

HAVA requires voting systems to provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.

Under New Mexico's Constitution and Statutes, all election materials are required to be printed in the Spanish and English languages. Where a minority language is historically unwritten, all proclamations, registrations, voting notices, instructions, assistance and other information related to the electoral process are provided orally in the respective minority language. This protocol also applies to the media when practicable, public meetings and on Election Day at the polling sites.

In 1988, the Office of the Secretary of State created its Native American Education Information Program. Two Native American Bureau of Election employees provide comprehensive and detailed election information to all tribes in the state. State election proclamations and proposed statewide ballot questions are translated into nine native languages by the Office of the Secretary of State. Once translated, they are radio-broadcasted in counties with pueblo and tribal citizens in order to inform them of the intent and effect of the proposed ballot questions. Counties with large Native American populations have local inter-tribal programs and Native American staff that assist the surrounding populations and provide registration and election information programs. The Office of the Secretary of State facilitates training and assistance to local Native American coordinators. Counties with Native American populations provide translators at polling sites on Election Day. In addition, the AutoMARK™ Voter Assist Terminal also provides audio assistance to the visually impaired and alternative language accessibility to voters.

Error Rates & ABD Definition of Vote

HAVA requires that the error rate of all voting systems used to conduct federal elections shall comply with the current error rate standards by the Election Assistance Commission (EAC). These error rates are attributed to the voting system and not due to the actions of individual voters.

All voting systems certified in the State of New Mexico are required to meet the federal standards under state statutes. Any future systems acquired in compliance with HAVA requirements shall also meet the established federal error rates.

HAVA requires that states adopt "uniform and non-discriminatory standards" for what constitutes a vote. A uniform, statewide definition of what constitutes a vote on a paper ballot was established in accordance with 1-9-4.2B NMSA 1978. This statute has been upheld by the New Mexico Supreme Court as complying with the HAVA requirements.

Provisional Voting and Voting Information

Provisional Voting

HAVA requires that states provide a provisional ballot, formally known as "fail safe voting" under the National Voter Registration Act, to any individual who declares that he or she is a registered voter of the county and is eligible to vote in a federal election. The Act requires the State of New Mexico to provide a "free-access" system so an individual who casts a provisional ballot may determine whether or not the vote was counted.

New Mexico provides a provisional voting program, with all election materials necessary to allow voters to take full advantage of provisional ballots. In order for voters to determine the disposition of their provisional ballot, the Office of the Secretary of State provides a toll-free phone line. County election

officials provide a report on the disposition of each provisional ballot to the New Mexico Secretary of State's Bureau of Elections. An administrative rule has been implemented to establish uniform procedures for provisional voting.

Voting Information

HAVA requires that specific voting information be posted at every polling site on Election Day that includes: 1) a sample ballot; 2) instructions on how to vote and cast a provisional ballot; 3) instructions for mail-in registrants; 4) instructions for first-time voters; and 5) general information on voting rights and voter fraud. New Mexico currently posts and publishes voter information through a variety of media outlets available at various locations. Election proclamations are published in legal notices for five consecutive days and constitutional amendments are published in legal notices in every county, four times prior to an election. These notices are also posted on the New Mexico Secretary of State's website and broadcast in Native American languages. The Office of the New Mexico Secretary of State publishes a voter guide with a listing of the offices, candidates on the ballot and the content (including pro and con arguments) for each constitutional amendment or general obligation bond. The Office of the New Mexico Secretary of State has maintained a toll-free telephone number, so that voters may receive voting assistance, make inquires about the electoral process, as well as report irregularities at the polling sites.

In addition to the information provided, New Mexico continuously strives to maintain compliance with all voter information requirements of the Help America Vote Act.

Computerized Statewide Voter Registration System

HAVA requires states to establish a "single, uniform, official, centralized, interactive, computerized state voter registration list defined, maintained and administered at the State level."

In 1989, the New Mexico Election Code was amended to include the Automated Voter Records System Act. The Act requires that the Secretary of State establish a statewide computerized voter registration system. The New Mexico Secretary of State's Information Technology staff collaborates with County Clerks to generate monthly reports to address errors, discrepancies and duplicate social security numbers. Due to the State of New Mexico using voter's social security numbers prior to the enactment of the Privacy Act of 1974, the state was grand-fathered in under the new law to allow the use of the entire social security number for voter registration purposes.

In 1999, the New Mexico Secretary of State's Office received legislative funding and began working with a committee of County Clerks and data processors to establish a statewide voter registration system called the "Voter Registration and Election Management System" (VREMS). The committee developed system requirements, interviewed vendors, sought references from other states and worked with the State Purchasing Department to create a request for a proposal process. After a selection was made by the committee, installation in the pilot county began in early 2000. Presently, the statewide computer database system has been installed in 32 of the 33 counties in the State of New Mexico. The installation of the last county is expected to be completed by the end of the federal FY 09/10, in accordance with the 2008-2009 State Plan.

The system shall meet all HAVA standards and is designed to meet the list maintenance requirements of the National Voter Registration Act (NVRA). Presently, it is being centrally administered by the Office of the Secretary of State.

Requirements for Voters Who Register by Mail (Mail-In Voter Registration)

Section 303 of the Help America Vote Act requires first-time voters who register by mail to submit documentation such as a valid photo ID, a copy of a current utility bill, bank statement, government check, paycheck or other government document that verifies the name and address of the voter or other government document, including identification issued by an Indian nation, tribe or pueblo, that shows the name and address of the person. HAVA also requires the mail-in voter registration form to ask separate "yes" or "no" questions regarding citizenship and age. The form must also contain a statement that informs voters that if they respond "no" to either question, they are not to complete the form. The Act requires that the form contain language notifying the first-time registrant by mail of the identification requirements.

The New Mexico Secretary of State has designed and implemented a new voter registration application form (NMVR-1) that is in compliance with Federal and State laws. Additionally, the Third Party Voter Registration Agent Manual includes a step by step process to properly register qualified electors.

Training and Voter Outreach Education

HAVA requires states to provide training programs for local presiding judges, precinct officials and poll workers, including voter education programs.

Training

The New Mexico Secretary of State is required by election law to "obtain and maintain uniformity in the application, operation and interpretation of the Election Code." This has led to conducting statewide election schools that include all 33 County Clerks prior to each statewide election. Classroom and hands-on training is provided to the County Clerks, presiding judges, precinct officials and election staff volunteers, which cover many aspects of election administration, application and ADA compliance focusing on the needs and legal rights of all voters, including voters with disabilities, as they relate to the registration and voting process. In addition, the Office of the Secretary of State must develop, print and distribute all forms and instructions, prescribed accordingly. The New Mexico Secretary of State continues to improve the process of distributing training and educational materials by making them accessible on the agency's website.

In FY 07/08, the Secretary of State provided two comprehensive election school trainings to the 33 County Clerks in the State of New Mexico.

In addition to the scheduled election schools provided prior to an election, training workshops are also made available upon request from the County Clerks. Furthermore, the Secretary of State's Office, Bureau of Elections, regularly attends County Clerk affiliate meetings in order to inform local election officials of any changes to state and federal laws.

The Office of the Secretary of State has expanded training to include a comprehensive training manual for local precinct officials, presiding judges, election judges and other poll workers throughout the state; and implementation of a certification program that recognizes individuals who participate in a New Mexico Secretary of State sponsored election school workshop. One goal of the Secretary of State is to establish statewide and national certification programs that recognize the importance of standardized training being provided to County Clerks, their staff and election workers. This would include county election officials earning credit for classroom training, on-the-job experience and attending seminars and meetings on election administration. The certification would include the testing of election officials and on-site reviews of county election practices and procedures. After completion of sufficient credit hours, a certificate is awarded. Ongoing certification would require continuous training, attendance at seminars and meetings and a regular evaluation of administrative practices.

The New Mexico Secretary of State provides voting machine technician certification training through a company retained by the voting machine vendor. This assures that all 33 County Clerks do not have to rely on vendors for the operation and programming of their voting system. As a part of the state's training requirements, precinct board manuals are updated as funding is made available and video instruction materials are developed for each voting system. Some training aids utilized in the poll-worker training workshops are: 1) role-playing exercises for the poll workers; 2) use of visual aids; 3) self-assessments for poll workers following training sessions; and 4) information on how to deal with shortage of poll workers in certain areas.

In an effort to improve the election process for precinct officials and voters throughout the State, the Office of the Secretary of State is committed to working with federal, state and local government agencies, law makers, protection and advocacy agencies that work and/or represent persons with disabilities, schools, community grassroots organizations, civic groups, law enforcement agencies, the public in general and various news media organizations in order to further improve the election process.

Voter Outreach Education

Easy to use, non-technical voter outreach materials provide information for voters on the requirements for registration, use of voting systems and their rights as a voter. The New Mexico Secretary of State's Voter Guide is published prior to General Elections and includes a listing of offices and candidates on the ballot; a list of ballot questions; and an analysis of ballot questions both in the English and Spanish languages. Similar information is provided to non-written Native American language speakers through radio broadcasts. The New Mexico Secretary of State's Office is working with the Native American communities to develop materials for voter education.

Voter and election information is provided on the New Mexico Secretary of State's website. Depending on funding availability, the Voter Guide may be mailed to every household in the state. Registration instructions and requirements are included on the Voter Registration Certificate (application). Instructions to voters on the operation of voting systems are posted inside the voting booths and absentee ballot instructions are included in the materials sent to voters.

The Office of the New Mexico Secretary of State's website provides a plethora of information, such as, but not limited to:

- General Election Information and Instructions
- Sample Ballots for all 33 Counties
- Native American Election Information
- Statewide Polling Site Locations

- Provisional Ballot Information
- General Information for Military and Overseas Voters
- Federal Identification Requirements for Registration by Mail
- Absentee Ballot Voting
- How to Obtain a Replacement Absentee Ballot
- How to Report Suspected Voter Fraud
- How to File an Administrative Complaint
- Campaign Finance Reporting
- Lobbyist Reports
- Financial Disclosures
- Political Action Committees
- Confidential Address Program
- Government Conduct Act
- Informational Voter Materials for Persons with Disabilities (currently being developed for the website.)

The New Mexico Secretary of State collaborates with state agencies whose primary missions are to provide services to persons with disabilities and those receiving public assistance with the opportunity to register to vote. Additional voter outreach is being undertaken to ensure the election process is accessible and accounts for the voter's needs, including ballot access for those with medical emergencies on Election Day. To promote access for persons who are deaf and/or hard of hearing, the Office of the Secretary of the State and County Clerks throughout the state are utilizing Telecommunication Devices for the Deaf (TDDs), which include separate communication lines. Training to election staff on the use of these devices is provided. Through direct publicity campaigns and assistance provided by community-based disability organizations, the state has undertaken outreach efforts designed to educate persons with disabilities on their right to register and vote, as well as how and where to do so.

Voter outreach programs were also developed and implemented to encourage greater youth participation in the electoral process. Furthermore, as part of a statewide effort to increase voter turnout, poll-site location information is being promoted through television, radio and other written media formats.

County Clerks throughout the state continue to be encouraged to participate in grant opportunities under Sections 101, 251 and 261 of the Help America Vote Act, for the improvement of the administration of elections and for upgrading facilities for improved voter accessibility.

PREVIOUS YEAR'S STATE PLAN

FY 2008/2009 HAVA, SECTION 251 STATE PLAN

The New Mexico Secretary of State acquired federal funds for FY 08/09 in the amount of $705,983 under HAVA with a required 5% match ($37,157) for improving the administration of elections, as stipulated under Part I of Sub-title D of Title II for discretionary improvements in accordance to Title I, Section 101 and Title II, Sections 251, 261 and 291. The State Plan adopted the following changes to the State Plan from the previous year (2007-2008), which are currently in the process of being developed and/or implemented, which include: 1) a collaborative pilot project with the counties of Lea, Taos and Valencia, New Mexico for the testing of an electronic poll book system; 2) facilitation of a statewide training workshop for County Clerks in ADA compliance and voter education, to include other HAVA requirements; 3) voter registration and election information campaigns to the general public through various media forums; 4) statewide community voter registration and voter information campaigns, including provisions for persons with disabilities; and 5) completion of the computerized statewide voter registration file, interactive database of all registered voters, also known as the Voter Registration and Election Management System (VREMS). (Note: Once the computerized voter registration file, interactive database statewide system is installed in San Juan County, New Mexico, then all 33 counties will be linked statewide.)

CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

FY 09/10 STATE PLAN SUMMARY

Funding Distribution and Controls

The Help America Vote Act requires that states include information on how they plan to establish funds used to make expenditures that meet the various requirements of the Act, information on fund management and information on estimated costs. Therefore, the Office of the New Mexico Secretary of State intends to utilize federal funds to address the requirements placed on the state by the Help America Vote Act, under this HAVA Grant as identified in Part I of Sub-title D, Title II, Section 251 for discretionary improvements for FY 09/10. It is anticipated that the allocated funds to the State of New Mexico in the amount of $613,898 with a required 5% match from the State of New Mexico in the amount of $32,310 (Bernalillo

County = $29,187.21 and Secretary of State's Office = $ 3,122.79) will be used to adopt the following changes to the State Plan from the previous year.

Formula for the 5% Match

The 5% match is for the total program (federal share plus state match share). Therefore the formula for calculating the program is:

(Federal Dollars/.95) - Federal Dollars = State Match

or

$613,898/.95 - $613,898 = 32,310

Planned Project

It is the intent of the New Mexico Secretary of State to utilize the 2009-2010 HAVA, Section 251 funds to: Secure a custom hardware, firmware and software maintenance services information technology contractual agreement for all state approved voting machines and other ancillary election equipment.

PERFORMANCE GOALS AND MEASURES

Performance Goal

The goal for the project is to secure a custom hardware, firmware and software maintenance and support services information technology contractual agreement that will ensure that all state approved voting machines and ancillary election equipment are maintained in accordance with HAVA, and other state election laws and rules for a period of one (1) year from December 21, 2009 through December 20, 2010. Therefore, the New Mexico Secretary of the State shall establish a contract agreement that identifies the scope of services and other contractual stipulations as described in Attachment "A" of this proposal.

Cost: $646,208

Date of Completion: 12/20/2010

Project Criteria for Measuring and Gathering Performance Data

The following criteria will be used for measuring and gathering performance data for project:

1) Scope (measure events affecting cost, implementation, schedule or quality).
2) Schedule (progress toward goals); Resources (measures personnel and financial investment).
3) Quality (measures effectiveness); and Risk (measures impact of certain events on operations).

Note: New Mexico has already enacted performance-based budgeting for all state agencies.

Ongoing Maintenance Plan

HAVA requires states to include their plan comments on how they will conduct the ongoing management of the plan.

The New Mexico Secretary of State is the "Chief State Election Official" responsible for the coordination of all of the state's responsibilities under the Act. This plan will be an essential component in New Mexico's continuing effort to improve the administration of the elections and comply with the provisions of the Help America Vote Act. While this plan is to meet requirements of HAVA, it is a matter of policy that the plan be considered a living, flexible, working document designed to assist New Mexico in the improvement and management of the election processes.

The New Mexico Secretary of State understands and agrees to comply with HAVA requirements related to the ongoing management of the Act and will not make any material change to this plan unless the change:

1) is developed and published in the Federal Register in accordance with Section 255 of the Act; and
2) is subject to public notice and comment in accordance with Section 256 of the Act in the same manner as the State Plan; and
3) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register.

Audit and Internal Controls

The New Mexico State Auditor's Office oversees audits of the Office of the New Mexico Secretary of State and related programs. Audits are conducted according to accepted auditing standards for financial audits issued by the Comptroller General of the United States.

Maintenance Effort

The Help America Vote Act requires a State that receives "requirement" payments to maintain the expenditures of the State at a level not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 01, 2010. This portion of the Act is referred to as the "maintenance of effort" clause. Under this state plan, New Mexico will comply fully with the maintenance of effort requirement.

ADMINISTRATIVE COMPLAINT PROCEDURE

HAVA § 402 (a) (1) mandates New Mexico establish and maintain a state-based administrative ***complaint procedure*** to remedy grievances under HAVA Title II, Section 251 (i.e. regarding voting system standards, provisional voting, voting information, computerized statewide voter registration list requirements and requirements for voters who register by mail). HAVA sets forth the specific requirements of this administrative compliant procedure and New Mexico Law [Laws 2003, Ch 356, § 5 ("Ch. 356")] essentially replicates the requirements and is in accordance with the State Rules Act [NMSA 1978 §§14-4-1 though 14-4-11 (1995)].

The purpose and intent of the ***administrative complaint procedure*** is to be informal in nature and to work toward an administrative, not judicial resolution to the problem in a violation of HAVA, Title III.

New Mexico's Election Code has been structured and implemented to prevent or minimize the occurrence of voting concerns. If any voting issues occur, the New Mexico Secretary of State's Bureau of Elections and the 33 County Clerks will attempt to immediately address and remedy the concern. Over the years, election officials have been very successful in addressing issues. The State of New Mexico is in a good position to build upon its current problem-solving process through the implementation of the administrative compliant procedure envisioned by HAVA. The State of New Mexico makes every effort to comply with HAVA's Title III requirements and has amended and enacted to the Election Code to meet the Title III requirements. Consequently, New Mexico anticipates very few allegations of Title III violations that cannot be resolved informally.

The State of New Mexico anticipates that all aspects of its administrative compliant procedure will be open to the public. To meet the specific requirements of both HAVA and Ch. 356, New Mexico has adopted rules implementing an administrative complaint procedure as follows:

A. Any complaint filed under the procedure must be limited to alleging a specific violation of Title III. In educating voters, New Mexico will inform all voters about Title III provisions and procedures for filing a complaint and also ensure that the procedural process is uniform and nondiscriminatory. Both the information provided to voters and the administrative compliant procedure will be available in alternative languages and formats pursuant to HAVA § 402 (a) (2) (A) and the state election code.

B. To maintain consistency and compliance, the 33 County Clerks and the New Mexico Secretary of State will continue to address oral complaints in an attempt to resolve the problem informally and expediently; however, a formal complaint alleging a Title III violation must be submitted in writing to the New Mexico Secretary of State's Bureau of Elections. A complaint form will be available from any County Clerk or the New Mexico Secretary of the State and accessible on-line pursuant to HAVA § 402 (a) (2) (B) and Ch. 356, § 5(B).

C. A formal complaint alleging a Title III violation must be submitted to the New Mexico Secretary of State's Bureau of Elections pursuant to HAVA § 402 (a) (2) (C) and Ch. 356, § 5(C).

D. If the New Mexico Secretary of State receives duplicate or repetitive complaints alleging Title III violations, the New Mexico Secretary of State may consolidate them for assessment, investigation and resolution pursuant to HAVA § 402 (a) (2) (D) and Ch. 356, § 5 (B).

E. If the New Mexico Secretary of State determines that a written complaint alleges an actual Title III violation and the complainant requests a hearing on his or her grievance, the New Mexico Secretary of State will appoint a hearing officer to conduct a hearing on the record. If the complaint is directed at a county election official, the hearing officer may be an employee of the Office of the New Mexico Secretary of State. If the complaint is directed at the New Mexico Secretary of State, the Secretary shall appoint a neutral hearing officer with no working or personal relationship with the Office of the New

Mexico Secretary of State. The record will include: 1) the written complaint; 2) any written response to the complaint; 3) all documentation provided in support of, or in defense of the complaint; and 4) the written or audio record of any formal proceedings conducted with regard to the complaint, which is pursuant to HAVA § 402 (a) (2) (E) and Ch. 356, § 5 (D).

The investigation and resolution process may include the following steps or actions taken by the New Mexico Secretary of State, as deemed appropriate under the circumstances by:

1) Sending an acknowledgement letter to the complainant, and notifying him/her that he or she is entitled to a hearing; and
2) Making an initial assessment of the complaint and determining whether it alleges a bonafide Title III violation; and
3) Seeking a response from the election official against whom a complaint is made; and
4) Providing the complainant with a copy of any response received from the election official against whom a complaint is made and giving the complainant an opportunity to reply; and
5) Engaging in informal resolution with the parties through a meeting, teleconference or other means; or
6) Dismissing the complaint based on its clear failure to allege a Title III violation.

If the New Mexico Secretary of State determines that a Title III violation has occurred, the State shall provide a remedy appropriate to the violation. Any remedy shall be in compliance with the provisions of the New Mexico Election Code. If HAVA or Ch. 356 does not define an "appropriate remedy" for a Title III violation, the State has the flexibility to remedy the problem and ensure that the problem does not reoccur. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include a written finding that Title III has been violated and the plan for rectifying the violation; and an assurance that additional training will be provided to the election official to ensure compliance with HAVA and the New Mexico Election Code that demonstrates a commitment to better inform voters of their rights. The Office of the New Mexico Secretary of State will also provide a notice in the website and, if necessary and appropriate, distribute a news release that publicizes the results of its assessment and investigation of the complaint pursuant to HAVA § 402 (a) (2) (F) and Ch. 356, § 5(E).

F. If the New Mexico Secretary of State determines that Title III has not been violated, the State shall dismiss the complaint. A notice shall be posted on the website and a news release will be distributed as appropriate. The New Mexico Secretary of State shall publicize the result of its assessment and investigation of the complaint that results in a finding that no Title III violation has occurred pursuant to HAVA § 408 (a) (2) (G) and Ch. 356, § 5(E).

G. The New Mexico Secretary of State shall make a final determination regarding a written complaint within 90 days after it has been filed with the Office of the New Mexico Secretary of State, unless the complainant consents to extending the deadline. This final determination shall be in writing and provided to the complainant and the election official against whom the complaint was made. An effort will be made to ensure the 90-day timeline is met. If additional time is needed, then the state must request an extension of time from the complainant. If the complainant refuses to consent to an extension, either the state must make its final determination or the complaint will automatically proceed to alternative dispute resolution pursuant to HAVA § 402 (a) (2) (H) and Ch. 356, § 5(F).

H. If the New Mexico Secretary of State fails to make a final determination within the 90-day timeline or as extended by consent of the complainant, the complaint shall be resolved pursuant to the procedures set forth in the New Mexico Governmental Dispute Resolution Act pursuant to NMSA 1978 §§ 12-8A-1 though 12-8A-5 (2000). This Act provides that the parties shall develop an agreement, which will govern the alternative dispute resolution process. All the records and materials from the hearing shall be made available for use in the alternative dispute resolution procedure. The New Mexico Secretary of State must adopt the agreement reached by the parties to the alternative dispute resolution procedure within 60 days after the complaint is referred for resolution under the New Mexico Governmental Dispute Resolution Act pursuant to HAVA § 402 (a) (2) (I) and Ch. 356, § 5(F).

HAVA gives the state the discretion to choose what it deems to be the most appropriate method of complying with the elements of its HAVA State Plan pursuant to HAVA § 253 (c). Generally, the right to judicial review is specifically provided by statute. Neither HAVA nor Ch. 356 provides a statutory right to judicial review of a determination made by the state pursuant to the administrative complaint procedure. The ***New Mexico Administrative Procedure Act*** only "applies to agencies made subject to coverage by law" pursuant to NMSA 1978, § 12-8-23 (1969) and Ch. 356. (Note: The law does not make the New Mexico Secretary of State subject to this Act.) The HAVA administrative complaint procedure need not comply with the ***Administrative Procedures*** *Act* requirements. New Mexico's administrative complaint procedure will be based upon existing laws and procedures and will provide an informal and flexible approach to resolving Title III violations. This procedure does not include judicial review provisions.

ATTACHMENT "A"

State of New Mexico

New Mexico Secretary of State

Information Technology
Agreement for Custom Hardware, Firmware and Software Maintenance Services
Contract No.: _____

THIS Information Technology Agreement is made by and between the **New Mexico Secretary of State's Office** hereinafter referred to as the "Procuring Agency" and **[Insert Vendor's 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 expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the ONE SOURCE and the Contractor's response to such document(s) are incorporated herein by reference; and

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

ARTICLE 1 – DEFINITIONS

A. "Acceptance" shall mean the approval, for the purpose of payment, of Deliverables by an executive level representative ("Executive Level Representative") of the Procuring Agency.

B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes and enhancements produced by the Contractor.

C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.

D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work.

E. "Chief Information Officer ("CIO")" shall mean the Secretary/CIO of the Department of Information Technology for the State of New Mexico or designated representative.

F. "Contract Manager" shall mean a qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be **Kathleen Branchal** or designated representative.

G. "Default/Breach" shall mean a violation of a contract by either failing to perform one's own contractual obligations or by interfering with another party's performance of its obligations.

H. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

I. "Designated Representative" shall mean an identified Procuring Agency employee or employees who are authorized to contact the Contractor to request software maintenance and/or support Services.

J. "DoIT" shall mean the Department of Information Technology.

K. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration/Contracts Review Bureau.

L. "Escrow" shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.

M. "Enhancement" means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an Error Correction. An Enhancement may be identified as minor or major. For the purpose of this Software Maintenance Template, only minor/small enhancements shall be included.

N. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives.

O. "Know How" shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

P. "Intellectual Property" shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

Q. "Minor Enhancement" or "small enhancement", means an enhancement or improvement to the base program or system from the time of production, the collective cost of which is under $100,000.00, non-critical or low risk, or is identified by the Secretary of the Department of Information Technology as a minor enhancement.

R. "Payment Invoice" shall mean a detailed, certified and written request for payment of services from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.

S. "Project" shall mean 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 approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT. If applicable, under the terms of this Agreement the Project is Political Finance Reporting System and Uniform Commercial Code.

T. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

U. "State Purchasing Agent (SPA)" shall mean the State Purchasing Agent for the State of New Mexico or designated representative.

V. "State Purchasing Division (SPD)" shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.

W. "Software Maintenance" shall mean the set of activities which result in changes to the originally accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and enhancements to the baseline system.

X. "Source Code" shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.

Y. "Subscription Services" means refers to the annual fee for license renewal and maintenance of operational applications or maintenance support and technical support services exclusive of enhancements. Such subscription services are required to be audited on a periodic basis by the procuring agency to determine if the services are being provided by the contractor as required by the procuring agency.

ARTICLE 2 – SCOPE OF WORK

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

B. Performance Measures. Contractor shall substantially perform the Performance Measures set forth in Exhibit A and as described below.

1. Contractor shall maintain a log of requests in an agency approved tracking system with a unique number assigned to each Procuring Agency request. The unique number shall be provided by the contractor to Procuring Agency for reference and communication. The Procuring Agency will assign one of four levels of priority to each request:

Priority 1 is the most severe program error and represents a situation where mission critical features and functions of the PFRS and UCC's are unavailable and no practical alternate mode of operation is available. Priority 1 problems will be corrected or a solution will be provided by Contractor technical staff for corrective action within two (2) hours.

Priority 2 indicates a problem in which certain features and functionality are not available and no practical alternate mode of operation is available. Priority 2 problems will be corrected or a plan will be provided by the Contractor for corrective action within one (1) business day.

Priority 3 is the normal "next-in-line" problem priority assignment. At this level, requests are worked on in the order in which they are received. Priority 3 problems will be corrected or a plan will be provided for corrective action within ten (10) business days.

Priority 4 is the Release assignment. At this level, requests are worked on as deemed appropriate by Procuring Agency. Priority 4 issues will be incorporated into specific Application Releases, which will be scheduled for delivery at the discretion of the Procuring Agency after time and cost estimates are provided by the Contractor and approved by the Agency, if applicable. As such, priority 4 issues will be due at the time the specific Release is delivered and only at that time.

C. Schedule. The due dates, as set forth in Exhibit A, shall not be altered or waived by the Procuring Agency without prior written approval, through the Change Management process, as defined in Article 13.

D. Source Code. Software developed as a result of maintenance releases by the Contractor shall be delivered as a complete Application Deployment Package. The application deployment package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.
For each maintenance release, the Application Deployment Package shall be updated and shall be kept by an identified escrow agent at the contractor's own expense. The application deployment package shall be in magnetic or digital form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the storage media. The Procuring Agency shall be listed with said escrow agent as an authorized recipient of the storage media which shall contain the most recent application maintenance release deployment package.

E. License. Contractor hereby grants Procuring Agency renewal of existing software licenses procured by the Procuring Agency as part of the original application deployment.

The Procuring Agency reserves its right to a perpetual, royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for governmental purposes, the source code developed under this agreement.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for Deliverables and Subscription Maintenance Services per the schedule outlined in Exhibit A.

B. Payment. The total compensation under this Agreement shall not exceed $_____ (One hundred thirty eight thousand, five hundred sixty one dollars sixty six cents) including New Mexico gross receipts tax.

December 01, 2009 – November 30 , 2010	**$591,847.00**

Billing shall take place quarterly with the invoicing detailed to reflect monthly charge for services.

Payment shall be made for Accepted Deliverables, and performance of Subscription Maintenance Services, as described in Exhibit A, 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. 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. N/A

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables and/or subscription services as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable and/or subscription services provided, or a description of the Deliverable and/or subscription services provided to the Support Manager. Each Payment Invoice shall be for the fixed Deliverable price and/or subscription services provided as set forth in Article 2 and Exhibit A.

B. Acceptance. In accord with Section 13-1-158 NMSA 1978; the Executive Level Representative shall determine if the Deliverable, including subscription services, provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Support Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1) Complies with the Deliverable requirements and subscription services engaged as defined in Article 2 and Exhibit A;
2) Meets the performance measures for the Deliverable(s) of this Agreement;
3) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s) and maintenance services; and
4) Complies with all the terms and conditions of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall, at the sole discretion of the Agency, be deemed as in breach of this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT and the STATE PURCHASING AGENT. This Agreement shall terminate on **November 30, 2010** unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed one year, except as set forth in Section 13-1-150 NMSA 1978.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

A. General. By either Party upon written notice to be delivered to the other party not less than fifteen (15) business days prior to the intended date of termination.

B. Appropriations. By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) business days prior to the effective date of the termination.

C. Obligations and Waiver. By termination pursuant to this Article, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS ARTICLE IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE PROCURING AGENCY AND THE STATE OF NEW MEXICO CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

1.) Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency.
2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
4.) Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
5.) Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6.) Cooperate fully in the closeout or transition of support activities to permit operational continuity in the administration of Procuring Agency programs;
7.) Remit to the Procuring Agency the full amount of any reductions in the Procuring Agency's receipt of program funds due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct.
8.) Reimburse the Procuring Agency for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred should this Agreement terminate due to the Contractor's default.
9.) Assist and cooperate with the Procuring Agency in the orderly and timely transfer of files, computer software, documentation, Know How, Intellectual Property and other materials, created or edited by the Contractor under this Agreement, including but not limited to, user manuals, functional and technical descriptions of each program and data flow diagrams.

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

ARTICLE 8 –INDEMNIFICATION

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

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

ARTICLE 9 – INTELLECTUAL PROPERTY

A. Ownership.

Contractor hereby acknowledges and grants to the Procuring Agency a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

1.) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2.) Allow the Contractor to manage the defense and settlement of the claim as permitted by law; and
3.) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

1.) Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service;
2.) Replace or modify the product or service so that it becomes non-infringing; or
3.) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

ARTICLE 11 - WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for 2yrs. years after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

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

[Insert Names of Contractor's Key Personnel]

B. Personnel Changes. The Contractor shall make interim arrangements to assure that the deliverable and/or subscription service schedule and quality 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. The Procuring Agency will incur no costs related to the transition of Contractor personnel responsible for performing tasks under this Agreement.

ARTICLE 13 – STATUS OF CONTRACTOR

A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

ARTICLE 14 - CHANGE MANAGEMENT

A. Changes. Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:

1) Deliverable requirements;
2) Compensation due under the terms of this Agreement; or
3) Due Date of any Deliverable as outlined in Exhibit A.

B. Change Request Process. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria: 1) The Support Manager shall draft a written Change Request for Executive Level Representative review and approval to include: the name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change, and 2) The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) working days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change requests, once approved, become a part of the contract and become binding as a part of the original contract.

ARTICLE 15 – 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 direct damages, and the Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6.

ARTICLE 16 – EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable 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.

ARTICLE 17 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the Procuring Agency's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the Procuring Agency or for losses occasioned by the Procuring Agency's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture of the equipment, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 18 – 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 this Agreement's approval authorities.

ARTICLE 19 – SUBCONTRACTING

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

ARTICLE 20 – RELEASE

The Contractor's acceptance of final payment of the amount 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. 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.

ARTICLE 21 – CONFIDENTIALITY

Any confidential information provided to the contractor by the agency or, developed by the Contractor based on information provided by the 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 material 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.

ARTICLE 22 –CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and 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. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 23 - RECORDS AND AUDIT

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during this 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, CIO, SPA, and DFA. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 24 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

ARTICLE 25 – 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 the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $500,000 dollars or;

(3) Have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 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: http://insurenewmexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees 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, $500,000 or $1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 26 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this 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 agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 27 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication or email communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

For PROCURING AGENCY

Don Francisco Trujillo, Deputy Secretary of State
New Mexico Secretary of State Office
325 Don Gaspar, Suite 300
Santa Fe, New Mexico 87503
Phone: 575-741-0909
Toll Free: 800-477-3632
dft@newmex.com

For CONTRACTOR

[Contractor Information entered here]

ARTICLE 28– GENERAL PROVISIONS

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

B. 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 agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, 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.

C. 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.

D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. 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 such lawsuits.

E. Waiver. 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 expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

F. 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.

ARTICLE 29 - SURVIVAL

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 30 – TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

ARTICLE 31 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party who performance is affected.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: _____ Date: _____
Mary Herrera
New Mexico Secretary of State

By: _____ Date: _____
[Contractor's Representative Signature]

By: _____ Date: _____
IT Director
New Mexico Secretary of State's Office

Approved for legal sufficiency:

By: _____ Date: _____
Assistant Attorney General
General Counsel for the Secretary of State

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

CRS ID Number: [Enter Number Here]

By: _____ Date: _____
Taxation & Revenue Dept Representative's Signature

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Laws 2007, Chapter 290; Information Technology Rules NMAC 1.12 *et. seq.*; and any and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico:

By: _____ Date: _____
Marlin Mackey,
Secretary, Department of Information Technology

This Agreement has been approved by the GSD/SPD:

By: _____ Date: _____

Michael Vineyard,
State Purchasing Agent for the State of New Mexico

EXHIBIT A – SCOPE OF WORK AND PRICING SCHEDULE

A. Goals. To maintain productive operation of the Voter Registration Hardware, Firmware and Software equipment and systems and provide technical support as outlined in the Deliverables listed below.

B. Objectives. To assist the Procuring Agency by providing high quality hardware, firmware and software maintenance services, including:

1) Timely response to requests
2) Fast relief to high impact problems
3) Timely problem resolution
4) Corrections to defects
5) Enhance the software to support the evolving needs of the Procuring Agency

C. Activities. Provide custom high quality hardware, firmware and software maintenance services support, to include enhancements, bug fixes and technical support.

Contractor will be responsible for providing first-level operational support to users of the hardware, firmware and software maintenance services. Such first-level operational support will include:

Installation and operation of the hardware, firmware and software maintenance services;
6) User support in the use of the hardware, firmware and software.
7) Receiving and responding to user inquiries and reports of problems
8) Creating trouble tickets recording user reports of problems,
9) Conducting initial diagnoses of problems set out in Tickets
10) Routing unresolved Tickets to appropriate resources at Procuring Agency, where problems are not related to deficiencies
11) Provide information on the use of the hardware, firmware and software pursuant to any user inquiry

Second Level Support - If Procuring Agency encounters a deficiency, it will route the Ticket to the Contractor through the Designated Representative. The Contractor will address the deficiency in accordance with the notification process and priority levels and provide technical support services as specified in Deliverable Number 1 - Technical Support upon being contacted by a Designated Representative

Hardware/Firmware/Software and System Support/Maintenance Pricing

Hardware/Firmware/Software and System Support:

Includes: 1) Hardware/Firmware/Software maintenance & support [Identify Specific Components]
2) Agency's database system support & maintenance [Identify Specific System]

The Maintenance Fees for the Term shall be as follows:

State of New Mexico Payment Responsibility: $591,847.00

A. Deliverable – Voter Registration Electronic Management Systems Database Support and Maintenance

Deliverable One	Due Date	Compensation
Technical Support - Database	Monthly from November 30, 2009 – December 01, 2010	[Enter $ Amount] including GRT not to exceed $591,847.00

Task Item	Sub Tasks	Description
Database Management Support		***All information below pertains to Voter Registration databases and Voter Registration software.***
	Sub 1	*Contractor* will maintain the Voter Registration Database System.
	Sub 2	*Contractor* will conduct a system performance analysis and recommend tuning parameters if required.
	Sub 3	*Contractor* will provide database support.
	Sub 4	*Contractor* will outline procedures and provide scripts for performing routine database fixes to agency for review and acceptance. Agency User group will test for acceptance.
	Sub 5	*Contractor* shall assist with database server recovery. Contractor will do daily and monthly backups.
	Sub 6	*Contractor* will work with agency technicians to resolve System Issues.
	Sub 7	*Contractor* will coordinate with the Agency to set a schedule when database maintenance or upgrades will be performed.
	Sub 8	*Contractor* will identify, implement and test User requirements for the Oracle system when tuning the Undo Records (Rollback Segments). Agency User group will test for acceptance.
	Sub9	*Contractor* will perform database restore recovery when necessary.
	Sub10	*Contractor* will outline operational and technical requirements for a Backup and Recovery Strategy and present to agency for review and acceptance.
	Sub 11	*Contractor* will install Oracle software version 10.0 and provide Oracle software upgrades as they become available through the course of the contract.
	Sub12	*Contractor* will maintain system configurations, including hard drive partitioning and capacity management.
	Sub 13	*Contactor* will contact *Agency* if replacement of parts is necessary.

Deliverable Two	Due Date	Compensation
Technical Support – Application	Monthly from November 30, 2009 – December 01, 2010	Included in payment defined in Deliverable 1

Task Item	Sub-Tasks	Description
PPEE Application Support and Maintenance		***Contractor's PPEE software support as set forth in the Agreement. Level 1-3 first line of contact.***
	Sub 1	*Contractor* will maintain Help Desk support 24x7during an election to respond to any emergency that may arise and Monday – Friday 8:30 to 7:30 EST thru the duration of the contract to assist procuring agency in its performance of the following: • Hardware, Firmware and Software problem diagnosis. • Support of *Contractor's* approved third-party hardware, firmware and software required to run EAS Products.
	Sub 2	*Contractor* is responsible for maintaining and managing all software licenses compliance and firmware and hardware warranty agreements and will provide annual status of license and hardware warranty for agency review and acceptance.
	Sub 3	*Contractor* will implement database tuning when issues are identified by procuring agency Users.

Deliverable Three	Due Date	Compensation
Technical Support – Hardware, Firmware, Software, Network & OS	**Monthly from November 30, 2009 – December 01, 2010**	**Included in payment defined in Deliverable 1**

Task Item	Sub-Tasks	Description
Software, Firmware, Hardware, Networking, OS and Application Maintenance		***All information pertains to Elections Systems & Software Voter Registration Firmware, Hardware Networking, OS and Applications.***
Network	**Sub 1**	*Contractor* will provide Network security and Router maintenance of Voter Registration Firmware, Hardware and Software.
Firmware, Hardware & Software	**Sub 1**	*Contractor* will provide OS patches and upgrades of Voter Registration Firmware, Hardware and Software.
	Sub 2	*Contractor* will provide monitoring of Voter Registration Devices that have automated alerting capability and Systems Alerts.
Hosting	**Sub 1**	*Contractor* will maintain the Primary Location at Department of Information Technology in Santa Fe and Secondary Recovery Hosting Site at Oso Grande in Albuquerque for the Agency pertaining to Voter Registration Firmware, Hardware and Software.

[FR Doc. 2010–11779 Filed 5–17–10; 8:45 am]

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