

Southwest Regional Education Cooperative #10

REQUEST FOR PROPOSALS (RFP)

Southwest Consortium



RFP #24-001

RFP Issuance Date: December 14, 2023

Proposal Due Date: February 5, 2024, by 4:30pm

ELECTRONIC-ONLY PROPOSAL SUBMISSION

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract for the purchase of professional services to provide Internet Access and telecommunications services to perform the scope of work described herein. All potential Offerors are encouraged to read this Request for Proposals carefully, especially mandatory requirements.

The Consortium has funds to administer the projects described in Section IV, Detailed Scope of Work.

The Southwest Consortium reserves the right to terminate any or all agreements prior to funding from E-rate. (See Section IV for detailed Scope of Work.)

B. BACKGROUND INFORMATION

The Southwest Consortium consists of two different school districts that receive telecommunications and internet access via fiber optic connections to Silver School District. We would like to continue receiving internet access as a consortium to continue to help promote growth and access to broadband in our area.

C. SCOPE OF PROCUREMENT

The Southwest Consortium (SWC) currently receives a total of 4 GB internet access. Internet is passed to the recipients via 2 GB connections from each of the two recipient school districts: Cobre and Lordsburg to Silver Schools. Additionally, a 1 GB WAN circuit links San Lorenzo Elementary to the Cobre Schools MDF as part of this consortium.

The Consortium's contract is expiring at the end of the 2023 E-rate funding year and this procurement is issued to create a new agreement with a responsive vendor that can provide internet access and WAN services to the current participating members of the consortium at a level equal to or better than the current service.

This RFP may result in a single or multiple awards.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by those two parties exclusively.

D. PROCUREMENT MANAGER

Southwest Regional Education Cooperative #10 has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name:	Lauren Verduzco, Procurement Manager
Address:	1321 E. Poplar Deming, NM 88030
Telephone:	575-546-5951
Email:	purchasing@swreacnm.org

1. Any inquiries or requests regarding this procurement should be submitted to the Procurement

Manager via email. Offerors may contact ONLY Southwest Regional Education Cooperative #10, Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond.

E. DEFINITION OF TERMINOLOGY

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

75% Complete: is when the construction document (working drawings and specifications) is complete and ready to bid and have received formal approval and acceptance by the owner.

Addendum or Amendment: a written change, addition, alteration, correction, or revision to an Invitation to Bid, Request for Proposal, or contract document.

Adequacy and Planning Guide: the reference guide to be used in the programming and design of school projects. The purpose of this guide is to clarify the “Adequacy Standards” and to provide assistance through references and “best Practice” examples.

Adequacy Standards: means the New Mexico Public School Statewide Adequacy Standards, which establish the acceptable levels for the physical condition and capacity of school buildings, the educational suitability of those facilities and the need for technological infrastructure at those facilities. The standards are not intended to restrict a facility’s size.

Agreement: means the agreement between NMPSFA and the firm for the work covered by this solicitation.

Agreement Administrator: The SWREC #10

Award: means the final execution of the contract document resulting from this solicitation.

Business Hours: 7:30 AM to 4:30 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

Close of Business: 4:30 PM Mountain Standard or Daylight Time, whichever is in use on the date given.

Confidential: means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act NMSA 1978, § 57-3-A-1 to § 57-3A-7. See NMAC § 1.4.1.25. As one example, no information that could be obtained from a source outside this solicitation can be considered confidential information.

Contract: a written agreement for the procurement of items of tangible personal property, services, or professional services.

Contractor: the successful Offeror who enters into a Price Agreement with SWREC #10

Consortium” means participating school districts, charter schools, libraries, and the Southwest Regional Education Cooperation #10 (SWREC #10) as financial lead.

Cost Reimbursement” means a contract which provides for a fee other than a fee based on a percentage of cost and under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms.

Design Professional” means the entity defined as an engineer, or the equipment Contractor, or both, which has undertaken to design the Project pursuant to a contract agreement with the Owner.

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

Determination: the written documentation of a decision of a procurement manager, including findings of fact required to support a decision. A determination becomes part of the procurement file.

District: means the School District.

e-Builder: means the Construction Information Management System (CIMS) utilized by the Owner and Co-Owner, and which the Design Professional must also utilize.

Electronic Version/Copy: means a digital form consisting of text, images, or both, readable on computers or other electronic devices that includes all content that the Original, Hard Copy proposals or bids contain. The digital form may be submitted using a USB flash drive or compact disc (CD).

Energy Star: is a voluntary program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy that identifies energy-efficient products and buildings. Qualified products and buildings exceed minimum Federal standards for energy consumption by a certain amount. Qualifying buildings which achieve an ENERGY STAR rating of 75 or above are eligible to receive the ENERGY STAR label. (See: <http://www.energystar.gov>) Compliance with ENERGY STAR is required on certain projects pursuant to NMSA 1978, § 15-3-36

Engineer: a New Mexico licensed engineer and is responsible for the engineering services.

Evaluation Committee: a body appointed by the Procurement Manager to perform the evaluation of Offerors’ proposals

Evaluation Committee Report: a report prepared by the Procurement Manager and the Evaluation Committee for contract award that will contain written determinations resulting from the procurement.

Finalist: an Offeror and/or Offerors who meet all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

Firm Fixed Price Contract: means a contract which has a fixed total price or fixed unit price.

Hourly Rate: means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

IT: Information Technology

LPB: local public body

Local Public Works: means a project of a local public body that uses architectural or engineering services requiring professional services costing fifty thousand dollars (\$50,000) or more or landscape architectural or surveying services requiring professional services costing ten thousand dollars (\$10,000) or more, excluding applicable state and local gross receipts taxes.

MACC: means the maximum allowable construction cost, which is the total sum available for construction purposes, including furnishings and equipment, but excluding professional fees, owner’s contingency

funds, acquisition costs, and other costs which are the responsibility of the Owner.

Mandatory: the terms "must," "shall," "will," "is required," or "are required" identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal as nonresponsive.

Minor Irregularities: anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.

Multiple Source Award: an award of an indefinite quantity contract for one or more similar services to more than one Offeror.

New Mexico Public School Facilities Authority or "NMPSFA": is a statutorily created agency pursuant to NMSA 1978, § 22-24-9 which serves as staff to the Public School Capital Outlay Council.

Offeror: any person, corporation, or partnership who chooses to submit a proposal.

Price Agreement: a definite quantity contract or indefinite quantity contract that requires the contractor to furnish services to the Procuring State agency.

Prime Contractor: chief contractor who has full responsibility for completion of the contract.

Procurement Manager: the person or designee authorized to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

Project: a temporary process undertaken to achieve 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 completed and project acceptance is given by the project executive sponsor.

Project Manager: means a Procuring State agency employee assigned by the Procuring State agency to oversee the contract work.

Proposal: means an Offeror's written offer or response to a Request for Proposal.

Public School Capital Outlay Council or "PSCOC": distributes funds from the Public Outlay Fund to school districts throughout the State of New Mexico as prescribed by NMSA 1978, § 22-24-1 through § 22-24-6.

Redacted: a version/copy of the Offeror's proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.

Request for Proposals or RFP: all documents, including those attached or incorporated by reference, used for soliciting proposals.

Requirements: are obligatory and mean the system functions that are related to the organization's goals and business opportunities. Requirements are defined by the project team and are usually prioritized.

Responsible Offeror: an Offeror submitting a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services described in the proposal.

Responsive Offer or Responsive Proposal: an offer or proposal that conforms in all material respects to the requirements set forth in a request for proposals. Material respects of a request for proposals include but are not limited to price, quality, quantity, or delivery requirements.

Solicited and Awarded: an Invitation to Bid or RFP was made available to the general public, through any means.

Staff: a full-time, part-time, or an independently contracted employee with the Offerors' company State (the State): the State of New Mexico.

State (the State): means the State of New Mexico.

State Agency or Agency: means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative or judicial branch of the government of this State. "State Agency" or "Agency" includes the New Mexico Public School Facilities Authority.

State Purchasing Agent: the State Purchasing Division of the General Services Department.

Statement of Concurrence: means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirements. This statement shall be included in Offeror's proposal. (E.g. "We concur", "Understands and Complies", "Comply", "Will Comply if Applicable", etc.).

Subcontractor: One who takes a portion of a contract from the principal contractor.

SWREC #10: Southwest Regional Education Cooperative.

Unredacted: a version or copy of the Offeror's proposal containing all complete information including any that the Offeror would otherwise consider confidential; such a copy for use only for the purpose of the evaluation.

Written: means typewritten on standard 8 ½ x 11 inch paper. Larger paper is permissible for charts, spreadsheets, etc.

F. PROCUREMENT LIBRARY

A document library has been established for Offerors to review. The library contains the information listed below and the content of each item can be located at the NMPSFA website at <https://www.nmpsfa.org> using the path as indicated:

Governance > Rules and NM Statewide Adequacy Standards

6.27.30 NMAC Statewide Adequacy Standards

6.27.31 Special Purpose Schools Educational Facility Adequacy Planning Guide (including Change #20
Special Purpose Schools Adequacy Planning Guide

6.27.1 PSCOC General Provisions

6.27.2 PSFA Duties & Authority

6.27.3 Application & Grant Procedures

6.27.4 Post Grant Procedures

Operations > Project Development > Process & Procedures > Contract Documents & Forms > Other PSFA
Standard Guide Specifications

Guide Specifications Division 02-49, Division 07 Thermal & Moisture Protection, Roofing Program
Handbook and Table of Contents:

Inclusive of all specification/requirements of Division 07 Thermal and Moisture Protection [if applicable].

Operations > Project Development > PSFA Performance Assurance Programs and Forms

The following documents are among those listed on the webpage: 019113 – General Commissioning

Specification

230593 – Test, Adjust, and Balance Specification 230800 – HVAC Commissioning Specification

NMPSFA Performance Assurance Manual Rev-07.30.2020 Performance Assurance Program Manual for TAB

See also:

[Operations > Planning > Building Standards and Planning Guidelines > Adequacy Standard & Guidelines](#)

[Operations > Planning > Educational Master Planning and Procurement](#)

[Operations > Project Development](#)

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule, description, and conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	SWREC	12.14.2023
2. Distribution List	Potential Offerors	01.04.2024
3. Deadline to Submit Questions	Potential Offerors	by 4:30 pm on 01.04.2024
4. Response to Written Questions	Procurement Manager	by 12:30 pm on 01.08.2024
5. Submission of Proposal	Potential Offerors	by 4:30 pm 02.05.2024
6. Proposal Evaluation	Evaluation Committee	02.06.2024 through 02.09.2024
7. Selection of Finalists	Evaluation Committee	02.06.2024
8. Best and Final Offers	Finalist Offerors	02.07.2024
9. Finalize Price Agreements	SWREC/Finalist Offerors	02.08.2024
10. Price Agreement Award(s)	SWREC/Finalist Offerors	02.09.2024
11. Protest Deadline	SWREC	02.24.2024

***The Procurement Manager will not be accessible between Wednesday, December 20, 2023 through Tuesday, January 2, 2024, due to being off contract. The Procurement Manager will be available beginning Wednesday, January 3, 2024 during normal business hours beginning at 7:30am MST/Daylight Time. Questions and inquiries regarding this procurement will be fielded immediately upon return.**

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued by the Southwest Regional Education Cooperative #10 on behalf of the Southwest Consortium.

2. Distribution List

Potential Offerors should complete the online *Distribution Form* to have their organization placed on the procurement distribution list. The form should be submitted by an authorized representative of the organization by **4:30 pm** MDT/MST on **January 4, 2024**.

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

LINK TO ACCESS THE DISTRIBUTION LIST

<https://www.cognitofrms.com/SWREC10/RFP24001DistributionList>

3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager with the intent to clarify the RFP until **January 4, 2024**, by **4:30 pm** Mountain Standard Time/Daylight Time as indicated in the sequence of events. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D.

4. Response to Written Questions

Written responses to written questions will be posted online as an Addendum to the RFP at www.swrecnm.org by the Procurement Manager as indicated in the sequence of events. An e-mail copy will be sent to all Offeror's that formally request, through the Distribution List, an e-mail copy of the responses from the Procurement Manager.

5. Submission of Proposal

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

All offeror proposals must be received for review and evaluation by the procurement manager or designee no later than **4:30 pm** Mountain Standard Time/Daylight Time on **February 5, 2024**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

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

It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via email by the deadline set forth in this RFP. The emails received after the date and time of the deadline will not be considered. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via online submission by the deadline, will be deemed late. Further, a submission that is not fully complete and received via email by the deadline because the response was captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, NO LATE PROPOSAL CAN BE ACCEPTED.

6. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in the Sequence of Events, depending on the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. Proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

The Selection Committee will review each Offeror's proposal. Points will be allocated by each member, as outlined in Section V of this RFP. Each member's point totals will be translated into a numeric ranking of all proposals. The five (5) individual member's rankings will be totaled together to determine the overall ranking of proposals.

7. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II, A. Sequence of Events, or as soon thereafter as possible. A schedule for the oral presentation and demonstration will be determined at this time.

8. Oral Presentations

Finalist Offerors, as selected per Section II.B.7 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If Oral Presentations are held, Finalist Offerors may be required to make their presentations through electronic means (Microsoft Teams, Zoom, etc.). The Agency will provide Finalist Offerors with an agenda and applicable details; including an invitation to the event. Whether or not Oral Presentations will be held is at the sole discretion of the Evaluation Committee.

For those proposals selected for interview, notices to finalists will include the interview date and time. Interviews are generally held at the offices of SWREC #10. The interview location may be changed at the discretion of the Selection Committee. Scoring for the interview will be based on responses to the questions presented at the pre-interview meeting. Interview scoring will total the points presented on the table indicated in section V. The points will be equally divided between the prepared questions and points will be allocated by each member. Each member's point totals will be translated into a numeric ranking of all interviewed firms. The five individual member rankings will be totaled together to determine the overall ranking of firms for the interview.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers per schedule Section II, A. Sequence of Events, or as soon thereafter as possible.

10. Finalize Contractual Agreements

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

11. Contract Awards

After review by the Evaluation Committee the Agency will make an award(s) in accordance with the Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of the Agency. The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to support the Scope of Work the most advantageous proposal may or may not have received the most points.

12. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978, and applicable procurement regulations. The fifteen (15) calendar day protest period shall begin on the day following the award of RFPs and will end at 4:30 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest, including appropriate supporting exhibits and must specify the ruling requested from the Business Manager. Protests received after the deadline will not be accepted. The protest must be delivered to:

Valerie Brea, Executive Director
Southwest Regional Education Cooperative
1321 E. Poplar
Deming, NM 88030
vbrea@swreconm.org

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

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

2. Incurring Cost

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

3. Prime Contractor Responsibility

Any RFP that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of any contract with a State Agency that may derive from this RFP. The State Agency hiring a *vendor* from the RFP will make payments only to the prime contractor.

4. Subcontractors

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

5. Amended Proposals

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

6. Offerors Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until negotiations are completed by SWREC. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate

eventual public inspection of the non-confidential portion of the proposal.

Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, §57-3A-1 through §57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

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

9. No Obligation

This procurement in no manner obligates the Southwest Regional Education Cooperative, the State of New Mexico or any of its Agencies to the use of Offeror services until a valid written contract is awarded and approved by appropriate authorities.

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

Only information supplied, in writing, by the Southwest Regional Education Cooperative through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals. Current and updated information regarding this procurement is available on the SWREC website at www.swrecnm.org.

15. Contract Terms and Conditions

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

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

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

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

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

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the State Agency.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the State Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

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

20. Change in Contractor Representatives

The State Agency reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the State Agency, meeting its needs adequately.

21. Notice of Penalties

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

penalties for bribes, gratuities, and kickbacks.

22. State Agency Rights

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

23. Right to Publish

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or state Agency contracts deriving from this procurement from SWREC and the Contract Lead. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the RFP.

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency.

25. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of SWREC.

The Contractor(s) shall agree to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without first procuring SWREC's written permission.

26. Electronic mail address required

All of the communications regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have and provide a valid e-mail address to receive this correspondence. (See also, Section II.B.4, Response to Written Questions).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the SWREC, the version maintained by the SWREC shall govern. Refer to: <http://www.swrecnm.org>.

28. New Mexico Employees Health Coverage

- A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.

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- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
 - D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form (See APPENDIX A) as a part of its proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor. Failure to complete and return the signed, unaltered form will result in disqualification.

30. Disclosure Regarding Responsibility

Any prospective Responsible Bidder/Offeror (hereafter Offeror) and/or any of its Principals who seek to enter into a contract greater than twenty thousand dollars (\$20,000.00) with any State Agency or LPB for professional services, tangible personal property, services, or construction agrees to disclose whether they, or any principal of their company:

- i. are presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, State Agency or LPB;
- ii. have, within a three-year period preceding this offer, been convicted of or had civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract; violation of federal or state antitrust statutes related to the submission of offers; or commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of federal criminal tax law, or receiving stolen property;
- iii. are presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with, commission of any of the offenses enumerated in paragraph 2 of this disclosure.
- iv. have, preceding this offer, been notified of any delinquent federal or state taxes in an amount that exceeds \$3,000.00, of which the liability remains unsatisfied
 - 1. Taxes are considered delinquent if both of the following criteria apply:
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge.
 - b. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted
 - 2. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- v. Have, within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body. Principal, for the purpose of this

disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities. The Offeror shall provide immediate written notice to the Procurement Manager or Buyer if, at any time prior to contract award, the Offeror learns that its disclosure was erroneous when submitting or became erroneous by reason of changed circumstances. A disclosure that any of the items in this requirement exist will not necessarily result in withholding an award under this solicitation. However, the disclosure will be considered in the determination of the Offeror's responsibility. Failure of the Offeror to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.

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

31. Conflict of Interest

The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance or services required under the Agreement. The Offeror certifies that the requirements of the Governmental Conduct Act, NMSA 1978, §10-16-1 through §10-16-18, regarding contracting with a public officer or state employee or former state employee have been followed.

32. New Mexico/Native American Resident Preferences

The New Mexico/Native American Resident Preferences shall not apply because the expenditure for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

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

A. NUMBER OF RESPONSES

Potential Offerors shall submit only one proposal for this RFP.

B. METHOD OF SUBMISSION

All Proposals must be submitted electronically.

LINK TO ACCESS THE PROPOSAL SUBMISSION SYSTEM

<https://www.cognitofrms.com/SWREC10/RFP24001ProposalSubmission>

C. PROPOSAL FORMAT

- i. All information for the technical proposal must be combined into a single pdf file/document for uploading. File naming convention <COMPANY NAME_RFP24-001>
- ii. Typeface must be easily readable such as Ariel, Calibri, Courier, or Times New Roman and type size must be 12-point
- iii. The proposal may be no longer than 100 single-spaced pages as a whole. Supplemental information may be appended to the proposal
- iv. All page numbers shall be numbered

For technical support issues, contact Lauren Verduzco (575) 546-5951.

Proposal Content and Organization

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material should be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

- a) Table of Contents
- b) Proposal Summary (Optional)
- c) Response to Specifications with the exception of cost
- d) Response to RFP Terms and Conditions
- e) Offeror's Additional Terms and Conditions
- f) Completed Cost Response Form
- g) Campaign Contribution Form
- h) Signed Employee Health Coverage Form
- i) Conflict of Interest Affidavit
- j) Debarment / Suspension Certification Form
- k) Signed Affidavit pursuant to Governmental Conduct Act (If applies)
- l) Resident Vendor or Resident Veteran Certificate (If applies)
- m) Resident Veterans Preference Certification (If applies)
- n) Other Supporting Material (Optional)

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must

appear only on the Cost Response form. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

Offerors may attach other material they believe may improve the quality of their responses.

IV. SPECIFICATIONS

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

A. DETAILED SCOPE OF WORK

The Southwest Consortium (SWC) is soliciting proposals for consortium internet access and WAN service. Currently, Cobre and Lordsburg school districts share 4 Gbps internet access using 2 Gbps fiber optic WAN connections from each of the district data centers to Silver Consolidated School District. Additionally, Cobre’s San Lorenzo Elementary connects to the Cobre MDF with a 1 Gbps fiber circuit as part of the consortium service.

SWC requests proposals for internet access and WAN service to the locations below. The consortium requires scalable, reliable, symmetrical bandwidth. Pricing must be provided using the attached pricing sheet for bandwidths ranging from 1 to 10 Gbps for WAN and 4 Gbps to 10 Gbps for internet access.

Projects

Location for Centralized Internet Hub (current) – POP ONLY – Not receiving services with the consortium now.

Location Name	Latitude/Longitude	Address
Silver Consolidated Schools	32.79283437127562, -108.26924868856771	2810 N. Swan St., Silver City, NM 88061

WAN Endpoints (District MDFs) – current

Location Name	Latitude / Longitude	Address
Cobre Consolidated Schools – Data Center,	32.76077192743264, -108.13129867346275	900 Central Ave., Bayard, NM 88023
Cobre San Lorenzo	32.81751539392635, -107.9367888092072	2655 Hwy 35 North, San Lorenzo, NM 88041
Lordsburg Municipal Schools - Data Center	32.3452272850735, -108.70108268696455	500 Ownby St., Lordsburg, NM 88045

Proposals including internet service shall include provision for the requested number of public IPv4 addresses for each entity, as listed in the pricing response sheet.

E-rate Form 470 Options Selected

Digital Transmission Service With Internet Access:

The solution must be scalable from 4 Gbps to 10 Gbps, with cost increments as listed in the appropriate cost sheet. **All offerors must be capable of providing telecommunication services under**

the Universal Service Support Mechanism.

Demarcation Point (demarc)

All solutions must terminate service or infrastructure to an existing network closet inside of the designated demarc address specified. Solutions bringing service to the property line but not inside of the demarc address are not acceptable and will be rejected.

All solutions must have a connection, or point of entry, into the existing Consortium fiber optic WAN as indicated previously. Alternatives are available through discussions with the consortium.

Contractor must specify your expected demarc setup included in base fees, e.g. fiber shelf with set-top box CPE and fiber or Cat6a handoff.

Description of Proposal

Offeror will provide a description of their proposal for all projects. Description will include an overview of the proposal, any deviations from the requested architecture, design or requirements, assumptions made, other detail Consortium may find useful or necessary (or could differentiate the solution from a competing proposal).

Service Level Agreement

Offeror will provide a description of the proposed services and service levels provided with responses. The offeror will provide a proposed Service Level Agreement (SLA) with the RFP response. The proposal may include, but not be limited to, the following services.

- For proposed fiber, Lit Fiber Network Availability: the provider will make all reasonable efforts to ensure 99.99% network availability of applicable fiber.
- Network Operations Center: Solution will provide customer support functions including problem tracking, resolution, and escalation support management on a 24x7x365 basis. Customer has the right and is encouraged to call concerning any problems that may arise relative to its connection with Vendor provided services.
- Trouble Reporting and Response: Upon interruption, degradation or loss of service, Customer may contact Vendor by defined method with a response based on trouble level. Upon contact from the Customer, the Vendor support team will initiate an immediate response to resolve any Customer issue. Customer will receive rapid feedback on trouble resolution, including potential resolution time.
- Escalation: In the event that service has not been restored in a timely manner, or the Customer does not feel that adequate attention has been allocated, the Customer can escalate the trouble resolution by request. A list of escalation contacts will be provided when the implementation schedule is completed.
- Resolution: The Customer will be notified immediately once the problem is resolved and will be asked for verbal closure of the incident.
- Trouble Reporting, Escalation and Resolution: A detail trouble reporting, escalation and resolution plan will be provided to the consortium.

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- Measurement: Vendor stated commitment is to respond to any outage within two (2) hours and six (6) hour restoration of service. Time starts from the time the Customer contacts Vendor and identifies the problem. Credits for Outages of shortage will be identified.
 - Reports: Upon request, an incident report will be made available to the Customer within five (5) working days of resolution of the trouble.
 - Link Performance per segment: The service will maintain the proposed Link Performance throughout the term of the contract.
 - The provider will make all reasonable efforts to ensure 99.99% network availability of each circuit.
 - Frame/packet loss .25% commitment
 - 25 ms Network Latency Commitment
 - 10 ms Network Jitter Commitment
 - There is no right of provider to limit or throttle the capacity of the circuit at any time for any reason.

Timeline

For each response, offerors must include a construction roadmap timeline for all sites. Preference is given to responses with a service start for all sites on July 1, 2024. A secondary preference will be given to responses with a service start for all sites August 1, 2024. All timelines will be considered and evaluated based on these preferences. Include how the timeline changes per site given an earlier or later start date. Actual start date on a construction project is dependent on the timing of the E-rate funding commitment decision letter.

The service is planned to begin as early as July 1, 2024.

Demarcation

All solutions must terminate service or infrastructure to an existing network closet inside of the designated demarc address specified. Solutions bringing service to the property line but not inside of the demarc address are not acceptable.

All solutions must have a connection, or point of entry, into the existing consortium fiber optic WAN as indicated previously, alternatives are available through discussions with the consortium.

Network Diagram

For each response, offerors must include a network diagram displaying the paths to be used to serve each endpoint. For self-provisioned fiber responses, offerors must include identification of aerial vs. buried fiber segments, detailed drawings showing fiber and equipment locations, and any other pertinent details.

Additional Description

Each response must also include description of proposal, SLA, timeline, network diagram, demarcation, references, as-builts in a kmz file, and Connect America Fund status as described in later sections.

All backhaul links must be scalable to 10 Gbps and adhere to performance standards as listed

elsewhere in this document.

Connect America Fund Consideration

For each school site, the offeror must note whether the address is included in a region where the offeror has already received (or is pending receipt of) funding via the Connect America Fund. In these cases, mention how the NRC or special construction charges have been adjusted considering the other source of funding.

Special Construction and Non-recurring Cost

Offerors providing lit fiber proposals which require an upfront payment may include a special construction cost or non-recurring cost. This upfront payment is considered **special construction** if any new infrastructure is being installed. If new infrastructure installation is not necessary, the payment is considered a **non-recurring cost** and must be entered into the pricing sheet accordingly. New special construction charges as defined by the FCC include construction, design, engineering and project management.

Required Notice to Proceed and Funding Availability

Consortium will follow the purchasing policies of the State of New Mexico and requirements and procedures of the FCC's E-rate program as administered by the Universal Service Administrative Company to be eligible for all available funding. The implementation of any associated contracts resulting from this competitive bid process will be dependent on the consortium's issuance of a written Notice to Proceed. E-rate funding notification alone will not signify Notice to Proceed. The consortium will have the right to allow the contract to expire without implementation if appropriate funding does not come available.

E-rate Modernization Order Note

Because New Mexico offers a state match as described in the E-rate Modernization Order, all proposals including special construction must provide a separate breakdown of special construction, one-time and recurring costs.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offerors must:

- (a) provide a description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative must thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of internet access and telecommunications services. All internet access and telecommunications services provided to a private sector will also be considered.
 1. Provide a summary of the Offeror's experience with services /projects like those proposed.
 2. Provide the name, title, qualifications, educational level and work experience of key personnel who will work on the project being proposed.
 3. Provide a statement regarding the use of subcontractors for each service / project proposed

and the percentage of work estimated to be subcontracted.

- (b) Indicate how many internet access consortia have been installed in the last two years and what percentage of business revenue is derived from internet access consortium engagements.
- (c) Describe at least two (2) project successes and failures of an internet access consortium engagement. Include how each experience improved the Offeror's services.

2. Organizational References

Vendors should provide a minimum of three (3) references from similar projects performed for private State and/or large local government clients within the last three years. *Vendors* are required to submit APPENDIX D, Reference Questionnaire, for the business references they list. The business references must submit the Reference Questionnaire directly to the Procurement Manager described in Section I, Paragraph D. It is the vendor's responsibility to ensure that the completed forms are received by or before the proposal submission deadline for inclusion in the evaluation process. Business references that are not received in time or are incomplete may adversely affect the vendor's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted.

- 2.1 Client name.
- 2.2 Project description.
- 2.3 Project dates (starting and ending);
- 2.4 Technical environment; (i.e., Software Applications, Internet Capabilities, Data Communications, Network, Hardware); and,
- 2.5 Client project manager name, telephone number, fax number, and e-mail address.

C. MANDATORY SPECIFICATIONS

Offerors shall respond in the form of a thorough narrative to each mandatory specification requiring such. The narratives along with required supporting materials will be evaluated and awarded points accordingly. Failure to address mandatory specifications/requirements, or provide the mandatory forms, will deem your proposal non-responsive.

1. Business Profile; Design and Technical Competence

Offerors must identify the Principal member or officer of the firm who will be responsible for the administration of the contract.

Offerors are to provide information about the firm's specific technical experience with similar projects that demonstrate competence to successfully complete the project. Indicate the relevance of previous projects to the anticipated scope of work. Demonstrate the successful aspects of past design projects and the corresponding applications to the proposed scope of work. Describe your firm's specialized problem-solving techniques or approaches, innovative practices/ideas, and advantages your team brings or offers to the project.

2. Capacity and Capability of the Offeror to Perform the Work

Offeror's must provide information about the business that demonstrates the ability to provide sufficient professional competence, meet time schedules, accommodate cost considerations and

project administration requirements. Provide information that demonstrates your firm's ability to perform the services required for this project. Include an organizational chart indicating key project team members, including any sub consultants, and their specific roles on the project and/or area(s) of expertise. Clearly identify the lead engineer who will be directly responsible for the project. Include in the organizational chart the percentage of time each team member will spend or commit to providing services toward the project.

Provide brief resumes for the lead engineer and key project team members, describing why each team member was selected for this project, highlighting relevant project experience and knowledge. Indicate if a subcontractor is affiliated with the prime contractor as an affiliated company, firm, or business. Also identify the firms or teams list of current projects.

Offeror should indicate their capacity to be able to provide all services as described in the Scope of Work to the whole consortium.

3. Past Record of Performance

Offeror's must demonstrate through historical documentation that the firm has the ability to meet schedules and budgets, as well as user program goals, and final construction project costs. Project schedules should provide information about the progress of work as related to owner schedules and goals as well as the overall success of projects and client satisfaction. Describe 3-5 past projects, specifying relevance to the current project. Include client references (names, addresses, email address and telephone numbers) for each project.

4. Proximity to or Familiarity with Site Location

Offeror must identify your familiarity with the project area and your understanding of the project scope. Offeror's must demonstrate through narrative, graphics or maps the firm's ability to respond quickly to on and off-site requirements for engineering services and administration of the project. Indicate previous knowledge or experience regarding the project location, and any current work or associated consultants who could enhance the firm's ability to provide timely responses or special expertise to project needs.

5. Evidence of Understanding of Scope of Work

Describe in detail the anticipated scope of work for the project. Include information about the project site, project administration, scheduling, budget and programmatic user requirements. The proposal should demonstrate competent knowledge of project constraints as well as any applicable discussion of possible options for design approaches or techniques.

D. BUSINESS SPECIFICATIONS

1. Cost

Offerors must complete Cost Response form in APPENDIX C. All charges listed on APPENDIX C must be justified and evidence of need documented in the proposal. E-rate eligible costs and ineligible E-rate service costs must be included and clearly identified. Additional comprehensive cost reports can be attached to APPENDIX C.

2. Campaign Contribution Disclosure Form

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

3. NM Employee Health Coverage Form

The Offeror **must** complete unaltered New Mexico Employee Health Coverage Form and submit a signed copy with its proposal. (See APPENDIX B)

4. Conflict of Interest Form

The Offeror **must** complete unaltered Conflict of Interest Form and submit a signed copy with its proposal. (See APPENDIX F)

5. Debarment / Suspension Certification Form

The Offeror **must** complete unaltered Debarment/Suspension Certification Form and submit a signed copy with its proposal. (See APPENDIX G)

6. Errors and Omissions Insurance Certificate

Documentation of current errors and omissions insurance is a mandatory requirement at the time of the contract execution in the amount listed in the contract agreement. Proof of insurance should be included in the proposal in the form of a current Certificate of Insurance.

7. Resident Business or Resident Veteran's Preference

The New Mexico Preferences shall not apply to this procurement because the expenditure for this RFP includes federal funds.

V. EVALUATION

E. EVALUATION POINT SUMMARY

Table I below is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Factor	Points Available
A Technical Specifications	
A(1) Capacity and Capability	10
A (1.1) Ability to Serve All of Consortium	Yes/No
A(2) Past Record of Performance	15
A(3) Proximity of Familiarity of Area	15
A(4) Evidence of Understanding SOW	20
B Business Specifications	
B(1) Total Cost	5
B(1.1) Cost: E-rate eligible	35
B(2) Campaign Contribution Disclosure Form	Pass/Fail
B(3) NM Employee Health Coverage Form	Pass/Fail
B(4) Conflict of Interest	Pass/Fail
B(5) Debarment/Suspension Certification	Pass/Fail
B(6) Errors and Omissions Insurance	Pass/Fail
TOTAL	100 points

F. EVALUATION FACTORS

A brief explanation of each evaluation category is listed below. Information in one category may overlap information in other categories. Offerors are encouraged to fully address each category completely, as points are assigned for responses to each separate category.

1. **A (1) Capacity and Capability (See Table 1)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the engagements cited, and the perceived validity of the response. The capacity of the business to perform the work, including any specialized services, within the time limitations.

A(1.1) Ability to Provide Services to All Consortium

Yes or No only. No points assigned. The ability of the Offeror to provide comprehensive services as outlined in the Scope of Work to the entire Consortium.

2. **A(2) Past Record of Performance (See Table 1)**

Points will be awarded based on the record of the Offeror's performance on contracts with government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules.

3. **A(3) Proximity to or Familiarity With the Area (See Table 1)**

Points will be awarded based on the Offeror's familiarity in which the project is located.

4. **A(4) Evident of Understanding of Scope of Work (See Table 1)**

Points will be awarded based on the Offeror's thoroughness and clarity of the response, the site location, and existing conditions.

5. **B (1) Total Cost (See Table 1)**

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

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror's Bid}} \times \text{Available Award}$$

B (1.1) Cost (See Table 1)

E-rate eligible costs must be highest weighted factor.

6. **B (2) Campaign Contribution Disclosure Form (See Table 1)**

Pass/Fail only. No points assigned.

7. **B (3) New Mexico Employee Health Coverage Form (See Table 1)**

Pass/Fail only. No points assigned.

8. **B (4) Conflict of Interest Form (See Table 1)**

Pass/Fail only. No points assigned.

9. **B (5) Debarment / Suspension Form (See Table 1)**

Pass/Fail only. No points assigned.

10. B (6) Errors and Omission Insurance (See Table 1)

Pass/Fail only. No points assigned.

11. New Mexico Preferences

The New Mexico Preferences shall not apply to this procurement because the expenditure for this RFP includes federal funds.

G. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II, Paragraph B. 6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C. 18.
4. Responsive proposals will be evaluated on the factors in Section V, which have been assigned a point value. Responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State, taking into consideration the evaluation factors in Section V, will be recommended for RFP to the State, as specified in Section II, Paragraph B.7. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
5. This procurement could result in contractual agreements between two parties; the procurement may be used by other parties (agency).
6. The Procurement Manager will notify in writing the final results of the solicitation by e-mail. For a period of thirty (30) days after the written date of award, proposals will be available for public inspection by appointment only, at the SWREC #10 Office. The Consortium shall keep one each of all proposals submitted for the procurement file.

H. ADMINISTRATIVE REQUIREMENTS

Awarded Offeror's will be required to provide the following documents prior to execution of contractual agreement:

1. Tax Identification: The Offeror must possess a tax identification number (Current Federal W9)
2. Offeror must provide background checks, as directed, for all persons within the organization that will be providing on-site services within New Mexico schools

APPENDIX A - Campaign Contribution Disclosure Form

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

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

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

The following definitions apply:

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

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

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

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

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

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that

person qualifies for a sole source or a small purchase contract.

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX B – New Mexico Employee Health Coverage Form

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

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

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

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

Signature of Offeror: _____

Date: _____

APPENDIX C & C1 – Cost Response Form

SAMPLE COST

Description of Good and/or Service	Cost

Cost should be inclusive of tax, travel, and any other incidentals

Total Cost: \$_____

Once Potential Offeror completes the Distribution List, an Excel Spreadsheet for a detailed cost response will be provided. You must complete the Distribution List by 4:30pm MST/Daylight Time on January 4, 2024 to access the Cost Sheet or through the Form 470:

<https://www.cognitofrms.com/SWREC10/RFP24001DistributionList>

APPENDIX D – Reference Questionnaire

REFERENCE QUESTIONNAIRE

As a part of the RFP process, the Southwest Regional Education Cooperative requires proposing vendors to submit a minimum of two (2) business references as required within this document. The purpose of these references is to document the experience relevant to the scope of work and provide assistance in the evaluation process.

The proposing vendor is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Procurement Manager by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal.

**RFP #24-001 REFERENCE QUESTIONNAIRE
FOR:**

(Name of company requesting reference)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the Southwest Regional Education Cooperative via e-mail at:

Name: Lauren Verduzco, Procurement Manager
Address: 1321 E. Poplar
Deming, NM 88030
Telephone: 575-546-5951
Email: purchasing@swrecnm.org

no later than **February 5, 2024** by **4:30 pm** Mountain Standard Time/Daylight Time and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

CONFIDENTIAL INFORMATION WHEN COMPLETED

Company providing reference:	
Contact name and title/position	
Contact telephone number	
Contact e-mail address	

QUESTIONS:

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

2. How would you rate this firm's knowledge and expertise?
____(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?
____(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the vendor?
____(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the vendor and your staff?
____(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the vendor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

7. How satisfied are you with the service developed and delivered by the vendor?
_____(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

APPENDIX E – Resident Veterans Certification

_____ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement:

Please check one box only

- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.
- I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this bid or proposal. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

"I agree to submit a report, or reports, to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

"In conjunction with this procurement and the requirements of this business' application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under NMSA 1978 §13-1-21 or §13-1-22, when awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

"I understand that knowingly giving false or misleading information on this report constitutes a crime."

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

(Signature of Business Representative) *

(Date)

*Must be an authorized signatory for the Business. The representations made in checking the boxes constitute a material representation by the business that is subject to protest and may result in denial of an award or non- award of the procurement involved if the statements are proven to be incorrect.

APPENDIX F – Conflict of Interest Form

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

The authorized Person, Firm and/or Corporation states that to the best of his/her belief and knowledge:

No employee or Coordinating Council member of the Agency or New Mexico Public Education Department (or close relative), with the exception of the person(s) identified below, has a direct or indirect financial interest in the Vendor or in the proposed transaction. Vendor neither employs, nor is negotiating to employ, any Agency employee, council member or close relative, with the exception of the person(s) identified below.

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

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

CERTIFICATION

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

Signature of Offeror: _____

Date: _____

APPENDIX G – Suspension Status Form

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

CERTIFICATION

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

Signature of Offeror: _____

Date: _____

APPENDIX H - SAMPLE SERVICE AGREEMENT

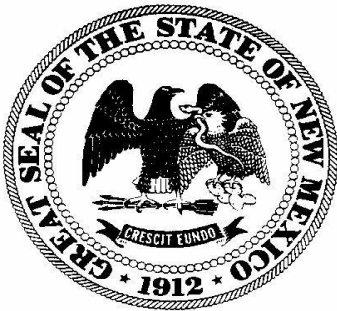
BROADBAND FIBER OPTICS/INTERNET SYSTEMS SERVICES AGREEMENT

Project No: RFP #

Agreement No:

Commodity Code Number(s):

Location:



Distribution to:

- Consortium Representative (original)
- Service Provider (original)
- Other

This Agreement entered into this _____ day of _____, 20_____, by and between

(NAME) CONSORTIUM
(ADDRESS 1)
(ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
TELEPHONE: (505) (PHONE)

(NAME OF FIRM)
(ADDRESS 1)
(ADDRESS 2)
(CITY/TOWN), NM (ZIP CODE)
TELEPHONE: (505) (PHONE) FEDERAL
ID:
CRS NUMBER:

**PRICING AND SERVICES
AGREEMENT
FOR:
Construction and Installment of Infrastructure for the
Broadband/WAN Systems**

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THIS AGREEMENT is made and entered into by and between _____ hereinafter referred to as the "Consortium," and _____ hereinafter referred to as the "Service Provider,"

and is effective as of the date set forth below upon which it is executed by the both parties. IT IS AGREED BETWEEN THE PARTIES:

That the intent and purpose that this Agreement (inclusive of all associated pricing and services) is to establish an Agreement for E-rate Program/Services and Projects for use by, and benefit of the Consortium, in support of the State of New Mexico's E-rate Public Schools & Libraries Program for E-rate eligible educational entities of the State of New Mexico.

The Service Provider has the experience, organization, human resources, financial and technical ability to provide the work/services.

This Agreement, by this reference, incorporates to the same extent as if they were set out verbatim herein, the specifications and requirements of RFP# _____, its associated Addendums, and Volume II Cost Proposal submitted by the Service Provider.

This Services/Pricing Agreement shall be executed in Two (2) Parts, which are as follows:

1. **Part I:** Consists of the **Construction and Installment of Infrastructure for the Broadband/WAN Systems**. The services to be provided under Part One of this Agreement is set-forth in Section 1.0 Scope of Work herein-below.
2. **Part II: Deployment, Service and Access (Page# _____)**. The commencement date of this Part of the Agreement shall be contingent upon, and shall not be effective until Part I is fully completed and accepted via Notice to Proceed by the Consortium. All cost associated with this Part shall be billed and invoiced separately from Part I of this Agreement.

Services provided/performed under this Agreement shall be performed at: _____, and, if applicable, at Service Provider's location at _____, between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time Monday through Friday, excluding applicable State and Federal holiday

PRICING AND SERVICES AGREEMENT PART I

1. Scope of Work

The Service Provider shall perform and provide the Services and Products contained in this Section, and such other services necessary for or incidental to the performance of Part I of this Agreement, in accordance with the Terms, Conditions, Requirements, Specifications, Standard of this Agreement, **RFP #24-001** inclusive of Exhibit A, the applicable provisions of Part II of this Agreement, and the Service Provider's Proposal.

Any conflict between the contents of the Service Provider's Proposal, and the general or specific provisions of Part II of this Agreement, in regard to the services provided under this Section 1.0, the general or specific provision of Part I of this Agreement and **RFP #24-001** shall prevail.

The Service Provider shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing and completing all the services required to be provided under this Agreement. The Service Provider's principal, on any project, shall possess at least 3 years of supervisory/management hands-on experience in the technical area being serviced.

Service Provider shall provide a Single Point of Contact (Service Provider Project Manager) to facilitate communication between the Consortium and Service Provider during project implementation, facility turn-up and subsequent ongoing service delivery. The Service Provider Project Manager shall provide regular documents status updates to the Consortium's Representative(s) on all project activities.

The Service Provider shall provide all applicable and appropriate Certificates of Insurance, Licenses, and all other applicable Certification for the work/service before the commencement of the work.

- A. The Contract shall provide and perform all necessary, required components and services for the delivery of the services and products specified in this Section 1.0, for the effective implementation, integration, delivery or, as applicable, the establishment of the services intended to be provided by the products and services:

ADD STATEMENT OF WORK (SOW) HERE

Service Provider agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as “laws”) applicable to the services provided under this Agreement.

B. Extension of/or Additional Services

Any services exceeding the scope of work and cost of **Part I** of this Agreement and the approved initial **Purchase Order**, shall be mutually agreed to in advance by Consortium and the Service Provider, and shall be authorized by an approved **Amendment to this Agreement** prior to the Service Provider proceeding with any additional work.

Amendments to the Proposal may form the basis of an additional **Purchase Order** to cover additional services, or in an amendment to the existing purchase order, depending on circumstances and approval by the Consortium. It is the Service Provider’s responsibility to inform Consortium in advance and in a timely manner when it is anticipated that any additional services will require modifications due to changes in the work. Consortium is not responsible for work performed without the proper documentation and an approved amended purchase document.

C. Investigation of Site and Project Conditions

Service Provider represents that, prior to submittal of the Proposal for the RFP and this Agreement, it has/will take all steps reasonably necessary to ascertain the nature and location of the Work and that it has investigated and satisfied itself as to the general and local conditions, which can affect the Work or its cost. In the event that the Consortium furnished the Service Provider with any information about such matters, Service Provider acknowledges that any reliance on such information will be at its own risk and that the Consortium does not warrant the correctness or accuracy of the information. Service Provider represents that it has examined all Contract/Agreement Documents and familiarized itself with the Project, the laws, rules, and regulations relating to the Project; the environmental considerations affecting the Project and the Work; and the character of equipment and facilities needed preliminary to and during Work performance.

No allowance will be made to the Service Provider for not having made such examination and review, or for requirements, which a reasonable examination, inquiry, or review would have disclosed. Except to the extent equitable adjustments may be made for differing site condition if: (1) the Service Provider did not know, or could not have known about the actual condition found at the site; (2) the Service Provider could not reasonably have anticipated the actual condition at the site from inspection or general experience; (3) the actual condition varied from the norm in similar contracting work; (4) the contract indicated the conditions that the Service Provider could expect to find at the site; (5) the conditions indicated in the contract differed materially from the actual conditions; (6) the actual conditions were reasonably unforeseeable based upon all the information available to the Service Provider at the time of the proposal; (7) the Service

Provider acted as a reasonably prudent Service Provider in interpreting the contract documents; and (8) the Service Provider incurred additional costs as a result of the difference between the expected conditions and the actual conditions. Service Provider will complete the work for the compensation stated in this Contract/Agreement and assume complete responsibility for the conditions (including subsurface or otherwise latent conditions) existing at the site and its surroundings.

Service Provider's obligation hereunder may include, but not be limited to, the location of all utilities that may affect or interfere with Service Provider's Work. Service Provider shall obtain all utility locates for all areas of its work and shall fully protect, and as necessary or required, maintain in operation all utilities at all times.

C.1. Materials and Workmanship

Service Provider expressly warrants that all items, materials, and work furnished by Service Provider under this contract will strictly conform to the contract documents. All the Work shall be performed with workmanship consistent with sound construction/installation practice, and all items and materials shall be new (unless otherwise provided in the contract documents), free from defects, of merchantable quality, and fit for the purposes intended. Service Provider shall install or apply all materials in strict accordance with installation or application instructions and procedures set forth by the material manufacturer. Installation or application by any other method shall not be permitted or accepted, unless specifically allowed herein. If required by the Consortium, Service Provider shall supply satisfactory evidence of the kind and quality of the items and materials purchased or otherwise supplied by Service Provider. In the event the scope of the Contract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Sub-contractor to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to ensure a satisfactory and proper installation.

- a.** All manufacturer or installer guarantees/warranties obtained by the Service Provider for any materials, products, services, or equipment procured under this contract shall be obtained for use and benefit of the Consortium.
- b.** All materials, products, parts, or equipment used to provide the services under this Contract shall be new and warranted by the manufacturer/installer standard warranty.
- c.** Documentation for all warranted items shall be provided to the Consortium either before or upon installation/use of the item(s). Warranty documentation for any and all items provided under this contract shall, at a minimum, contain the following information:

-
1. Brief statement that a warranty exists.
 2. Substance of the warranty.
 3. Duration of the warranty.
 4. Person/Company to notify if the items are defective.

D. The Service Provider shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character.

E. The Service Provider must be eligible to, and shall participate in the E-rate Program and has the responsibility to educate itself about the Program requirements and timelines. The Schools and Libraries Division (SLD) of the Universal Service Administration (USAC) will hold the Service Provider to statements made in applications, registrations, certifications and invoice forms. For more information on E-rate participation and procedures go to <https://www.usac.org/>.

F. Performance Measure/Deliverables

Service Provider shall provide the Consortium with complete as-built documentation of the network components including all network route information and circuit identification numbers.

2. Compensation

A. This is a Fixed-Price Agreement.

The work to be performed under **Part I** of this Agreement will be funded/paid for in part by and through the Federal Communication Commission (FCC) E-rate Program by USAC, the Consortium shall pay the non-discounted share for Service Provider services satisfactorily rendered pursuant to the Scope of Work set-forth in this agreement, inclusive of all expenses, an amount not to exceed \$ _____, excluding New Mexico gross receipts taxes.

The total monthly recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed \$ _____, excluding New Mexico gross receipts taxes.

The total yearly/annual recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed \$ _____, excluding New Mexico gross receipts taxes.

A.1. The New Mexico Gross Receipts tax to be levied on the **Firm-Fixed Price** total amount payable by the Consortium under this Agreement shall be at the rate of _____% or \$ _____ and shall be paid by Consortium to the Service Provider. The total **Firm-Fixed Price** total amount payable to the Service Provider under this Agreement, including gross receipts tax shall not exceed \$ _____.

The work performed under this **Part I** of this Agreement is to be directly funded/paid in part under FCC/USAC E-rate Funding. It shall be the Service Provider's responsibility to submit

invoices directly to USAC for the discount share of the approved eligible services. Service Provider hereby affirms that it meets, is fully knowledgeable and capable of all applicable FCC/USAC E-rate billing/invoicing requirements.

Service Provider shall be responsible for paying any and all taxes levied on amounts payable under this Agreement. For those taxes enumerated on Service Provider invoices payable by Consortium, the Service Provider will pay the taxing governmental agencies with funds received from Consortium for tax payment of said invoices. If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, Consortium shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The amount set for in Paragraph A.1 of this Section 2 is the maximum amount and not a guarantee that the work assigned to be performed by Service Provider under Part I of this Agreement shall equal the amount stated. The parties do not intend for the Service Provider to continue to provide services without compensation when the total compensation amount is reached. Service Provider is responsible for notifying the Consortium when the services provided under this Agreement reach the total compensation amount.

In no event shall Service Provider be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. Consortium shall receive all invoices no later than 30 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date CANNOT BE PAID.

B. Service Provider shall be responsible for paying any taxes levied on amounts payable under this Agreement.

C. Invoicing / Compensation Schedule

Subject to the condition precedent set forth in **Part I** of this Agreement, Consortium will make payments to the Service Provider. The progress payment amounts shall be based on the Consortium and Service Provider agreed upon Work Breakdown Structure (WBS) with assigned Schedules of value (SOV) submitted by the Service Provider within two (2) weeks after award of the Agreement. The maximum monthly compensation amount under this Agreement shall not exceed the value established under the WBS/SOV, **including New Mexico Gross Receipts Tax**, for the portion of the Work performed and

completed in the preceding month in accordance with monthly invoices prepared by Service Provider and as approved by Consortium.

The specified payable amount shall be based on and paid for upon satisfactory completion of services under this agreement. For services contained in the WBS/SOV that are not satisfactorily completed, payment shall be payable for the portion satisfactorily completed.

Service Provider must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. Invoices must be supported by approved purchase order or equivalent documentation and invoice by supplier, evidencing the propriety of each claim for payment. Service Provider shall certify that labor charges to the contract are direct charges and shall maintain records of wages, dates worked, and hours worked to support the certifications. If the Consortium finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of

(i) written notice from the Service Provider that payment is requested, and (ii) all supporting documentation; the Consortium shall provide the Service Provider a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Service Provider may take to provide remedial action. Upon the Consortium's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, Consortium shall tender payment to the Service Provider within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

However, the Consortium shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

It is anticipated that some or all of the Consortium's costs under this Agreement shall be eligible for the "E-Rate" discount under the Federal Communications Commission (FCC) Universal Service Provision. Accordingly, contingent upon the Consortium's receipt of a funding commitment decision letter (FCDL) from SLD/USAC and both Consortium's and Service Provider's compliance with all the SLD/USAC guidelines, the vendor shall offer an SLD/USAC discounted invoice payment option. In providing the two-tier billing system or discounted invoice payment option, Service Provider will be required to recover its compensation for the approved E-Rate eligible discounted services, which can be from twenty percent (20%) up to ninety percent (90%), directly from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC) in accordance with procedures established by the FCC and SLD/USAC. The Service Provider's invoices will itemize/breakdown the costs of all E-Rate eligible products and/or services from all non-E-Rate eligible products and/or services. To determine which items are eligible, visit the SLD/USAC E-Rate eligible services list <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-list/>

C-1. Exclusion of Liability for E-Rate Funding.

The Consortium shall have no liability for the E-Rate Portion of any costs incurred by the Service Provider's invoice if one of the following occurs:

-
- a. Products or services billed to the SLD are deemed ineligible pursuant to any event, including but not limited to an audit, after the SLD has reimbursed the Offeror for products or services that were previously considered eligible.
 - b. The vendor fails to adhere properly to SLD guidelines (e.g., missing a filing deadline for invoicing to the SLD), or is subject to the FCC “Red Light Rule” and subsequently is not paid by the SLD.

3. Term

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CONSORTIUM. This **Part I** of the Agreement shall terminate on the date of unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no contract term for a services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

Service Provider under this **Part I** of the Agreement is awarded a _____month Term. The Consortium reserves the right to extend the terms and conditions of Part I of this Agreement for an additional Two (2) years, in one (1) year increments, based on need for continuation of services, the performance and services rendered under the original term of the Agreement.

If the Primary Service Provider/principal providers of all services associated with the work, services, or products assigned/specified in this Agreement is released from its obligations by the Consortium for any reason (prior to the expiration of its tenure), the Second Ranked finalist in the RFP process may be moved to the vacated position to complete the contractual term as outlined in its proposal.

The Consortium reserves the right to review any Service Provider’s performance at any time as it relates to reliability, service, delivery, or invoice discrepancies and possibly elevate the “Secondary Ranked” RFP Service Provider to the “Primary” position if deemed in the best interest of the Consortium. In the event the Consortium is compelled to replace the “Primary” provider with the “Secondary”, due to default on the part of the “Primary”, the Consortium shall have the absolute right to deduct from any monies due the vendor or that may thereafter become due to the contract, the difference between the amount due and the actual cost of services to be replaced or substituted.

Failure by a Service Provider to provide or perform the services as specified in the Agreement may result in the Service Provider being prohibited from doing business with Consortium or the State of New Mexico for a period up to two years.

SURVIVAL CLAUSE: All duties and responsibilities of the Service Provider under this Agreement which, either expressly or by their nature extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this agreement.

4. Termination or Suspension

- A. Termination.** This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Consortium's sole liability upon such termination shall be to pay for acceptable work performed prior to the Service Provider's receipt of the notice of termination, if the Consortium is the terminating party, or the Service Provider's sending of the notice of termination, if the Service Provider is the termination party; provided; however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Service Provider shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Service Provider if the Service Provider becomes unable to perform the services contracted for, as determined by the Consortium or if, during the term of this Agreement, the Service Provider or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE SERVICE PROVIDER'S DEFAULT/BREACH OF THIS AGREEMENT.
- B. Termination Management.** Immediately upon receipt by either the Consortium or the Service Provider of notice of termination of this Agreement, the Service Provider shall:
- 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Consortium;
 - 2) comply with all directives issued by the Consortium in the notice of termination as to the performance of work under this Agreement; and
 - 3) take such action as the Consortium shall direct for the protection, preservation, retention or transfer of all property titled to the Consortium and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Service Provider with contract funds shall become the property of the Consortium upon termination and shall be submitted to the Consortium as soon as practicable.
- C. Agreement Suspension.** Consortium may order the Service Provider in writing to suspend, delay or interrupt all or any part of the Contract Work for such period of time as may be determined to be appropriate. If such suspension, delay or interruption is unreasonable, then the Service Provider may be entitled to an equitable adjustment. The short/incidental/reasonable stoppage of the Contract Work shall not be deemed suspension, delay, or interruption of work.

The Contract price shall not be adjusted for any suspension, delay or interruption to the extent that the performance of the Contract is, was, or would have been so suspended, delayed or interrupted by the fault or neglect of the Service Provider is entitled only to a time extension under this Contract.

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- D. Curing a Breach.** Either Party who receives a written Notice of Termination, of this Agreement, for a material breach by the other Party, the breaching Party will have the opportunity to cure such breach or breaches within the thirty (30) day period specified in the notice. In the event a cure is not made within the thirty (30) day period, this Agreement will terminate.

5. Appropriation

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico, or a Funding Commitment Decision Letter (FCDL) from Universal Service Administration (USAC) for this Agreement. If sufficient appropriations and authorization are not made by the Legislature or USAC, this Agreement shall terminate immediately upon written notice being given by the Consortium to the Service Provider. The Consortium's decision as to whether sufficient appropriations are available shall be accepted by the Service Provider and shall be final. If the Consortium proposes an amendment to the Agreement to unilaterally reduce funding, the Service Provider shall have the option to terminate the Agreement or to agree to the reduced funding within thirty (30) days of receipt of the proposed amendment.

6. Status of Service Provider

The Service Provider and its agents and employees are independent Service Providers performing professional services or labor for the Consortium and are not employees of the Consortium or the State of New Mexico. The Service Provider 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 Consortium or the State of New Mexico as a result of this Agreement. The Service Provider acknowledges that all sums received hereunder are reportable by the Service Provider for tax purposes, including without limitation, self-employment and business income tax. The Service Provider agrees not to purport to bind the Consortium or the State of New Mexico unless the Service Provider has express written authority to do so, and then only within the strict limits of that authority.

Certification. Service Provider shall furnish to Consortium(s), upon request, any certification required to be furnished by any provision of this Agreement or Order issued hereunder, including any clauses incorporated by reference herein, and any certificate required by this Agreement, any law, ordinance or regulation with respect to Service Provider's compliance with the terms and provisions of such law, ordinance, regulation, or this Agreement.

7. Subcontracting and Assignment

Service Provider shall not subcontract any portion of the Work without the prior written approval of the Consortium of the lower-tier subcontractor and the form, terms and conditions of the lower-tier subcontract. Service Provider's request for subcontracting shall not be unreasonably withheld. Service Provider shall not assign this Contract, or any of its rights hereunder, without the prior written approval of the Consortium. No assignment or subcontracting, even with the Consortium's approval, shall relieve the Service Provider of any obligations hereunder, or create any contractual relationship between such lower-tier subcontractor and the Consortium. Any

lower-tier subcontractor shall assume unto Consortium all of the obligations of Service Provider as they relate to such portion of the sublet Work.

If the Service Provider wishes to assign any of its rights (e.g., assign payment to another entity) whether internal or external to its organization, any such assignment shall be effectuated via a Deed of Assignment, and if Service Provider is to be, may be/or will be acquired either in part, substantially, or entirely by an outside entity, Service Provider shall effectuate such an action via a Deed of Novation. Service Provider submission of either of the stated deeds for approval will not be unreasonably denied by the Consortium.

8. Release

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

9. Confidentiality

Any confidential information provided to or developed by the Service Provider in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Service Provider without the prior written approval of the Consortium.

Service Provider shall be responsible for ensuring that all reports and analysis of any type which are developed by or communicated to Service Provider or any of its affiliates in performing the Work and all information, oral, electronic or written, obtained by Service Provider in connection with this Contract from the Consortium shall not be disclosed unless prior written approval from the Consortium is obtained. This obligation of Service Provider shall survive the expiration, suspension, or termination of this Contract. This obligation of confidentiality shall not apply to information: (a) that is previously known, or available, to Service Provider on an unrestricted and non-confidential basis; (b) that is, or becomes a part, of the public domain through a third party; (c) that is any obligation of confidentiality; or (d) that must be disclosed pursuant to legal requirements to which Service Provider is subject if such disclosure is mandatory upon Service Provider and failure to so disclose would subject Service Provider to civil or criminal penalties.

10. Product of Service - Copyright

RESERVED

11. Conflict of Interest, Governmental Conduct Act

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

B. The Service Provider further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement

complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Service Provider specifically represents and warrants that:

- 1) in accordance with Section 10-16-4.3 NMSA 1978, the Service Provider does not employ, has not employed, and will not employ during the term of this Agreement any Consortium employee while such employee was or is employed by the Consortium and participating directly or indirectly in the Consortium's contracting process;
- 2) this Agreement complies with Section 10-16-7(A) NMSA 1978 because (i) the Service Provider is not a public officer or employee of the State; (ii) the Service Provider is not a member of the family of a public officer or employee of the State; (iii) the Service Provider is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Service Provider is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with Section 10-16-8(A) NMSA 1978, (i) the Service Provider is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Service Provider is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Consortium's making this Agreement;
- 4) this Agreement complies with Section 10-16-9(A) NMSA 1978 because (i) the Service Provider is not a legislator; (ii) the Service Provider is not a member of a legislator's family; (iii) the Service Provider is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Service Provider is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;
- 5) in accordance with Section 10-16-13 NMSA 1978, the Service Provider has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement, or any procurement related to this Agreement; and

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

- C.** Service Provider's representations and warranties in Paragraphs A and B of this Section 11 are material representations of fact upon which the Consortium relied when this Agreement was entered into by the parties. Service Provider shall provide immediate written notice to the Consortium if, at any time during the term of this Agreement, Service Provider learns that Service Provider's representations and warranties in Paragraphs A and B of this Section 11 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Service Provider's representations and warranties in Paragraphs A and B of this Section 11 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Consortium and notwithstanding anything in the Agreement to the contrary, the Consortium may immediately terminate the Agreement.
- D.** All terms defined in the Governmental Conduct Act have the same meaning in this Section 11(B).

OCI Attachment 2014 is attached to this Contract and is incorporated herein to the same extent as if it has been set out verbatim in this Section 11.

10. Amendment

- A.** This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B.** If Consortium proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Service Provider shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Section 4 herein, or to agree to the reduced funding.

Consortium may at any time, by written notice, and without in any way invalidating this Agreement, make changes within the general scope of this Agreement in any one or more of the following: (i) description of services to be performed; (ii) time of performance; (iii) place of performance of the services; (iv) drawings, designs or specifications; or (v) method of delivery or packaging of Deliverables.

11. Merger

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and

understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

12. Penalties for Violation of Law

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.

13. Equal Opportunity Compliance

The Service Provider agrees to abide by all federal and state laws, rules, 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 Service Provider assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Service Provider is found not to be in compliance with these requirements during the life of this Agreement, Service Provider agrees to take appropriate steps to correct these deficiencies.

14. Governing Law and Venue

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

15. Worker's Compensation

The Service Provider agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Service Provider fails to comply with the Worker's Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Consortium.

16. Records and Financial Audit

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

17. Indemnification

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

18. New Mexico Employee Health Coverage

- A.** If Service Provider 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, Service Provider certifies, by signing this agreement, to 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 if the expected annual value in the aggregate of any and all contracts between Service Provider and the State exceed \$250,000 dollars.
- B.** Service Provider 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.** Service Provider 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://www.hsd.state.nm.us/LookingForAssistance/centennial-care-overview.aspx>.

19. Insurance Requirements

Prior to any work/services to be performed for any project under this agreement, the Service Provider shall submit Service Provider's proof of insurance via Certificate of Insurance.

The Service Provider will, at its sole expense, secure and maintain and will file with the Consortium proper and acceptable evidence of the following described insurance, which coverage shall (1) be secured with an insurance company acceptable to the Consortium, (2) be issued as a primary policy not contributing with and not in excess of any primary and/or excess coverages carried by the Consortium and (3) contain loss payable clauses satisfactory to the Consortium for applicable coverages.

Such coverage shall be provided without interruption or lapse of any kind regardless of the reason for the same. Subcontractor shall ensure that the policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Consortium shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or Service Provider gives written notice to the Consortium, whichever period is longer.

- A. Worker's Compensation Insurance and Employer's Liability Insurance.** Worker's compensation insurance and employer's liability insurance in compliance with the laws of all applicable jurisdictions and any other coverages that may apply where the work is performed covering all employees engaged in the performance of the Work associated in this Agreement and any project hereunder, including coverage for Employer's Liability for:
- a. Bodily Injury by Accident - \$500,000 each accident
 - b. Bodily Injury by Disease - \$500,000 each employee
 - c. Bodily Injury by Disease - \$500,000 policy limit
- B. Commercial Liability Insurance.** with minimum limits as follows:
- a. Each Occurrence Limit - \$1,000,000 combined single limit for bodily injury and property damage liability.
 - b. Med Expense (Any one person) - \$10,000.
 - c. Personal and advertising injury limit - \$1,000,000.
 - d. Products-Completed Operations Aggregate Limit - \$2,000,000
 - e. General Aggregate Limit (other than Products-Completed Operations) - \$2,000,000. This policy shall be endorsed to have the General Aggregate limit apply on a "per project basis".
- C. Automobile Liability Insurance.** *(Note: May be a Combined Insurance Policy)* Automobile liability insurance covering any auto (owned, non-owned and hired vehicles) with limits of not less than \$1,000,000 (each occurrence), for bodily injury (per person) not less than \$1,000,000, bodily injury (per accident) not less than \$1,000,000, and property damage liability resulting from any one accident not less than \$1,000,000.
- D. Excess/Umbrella Liability Insurance.** Excess/Umbrella insurance in an amount not less than \$3,000,000 combined single limit for any one occurrence, and \$3,000,000 aggregate. This policy is to provide no less than the same coverage described in Paragraphs i, ii, and iii above, and is to be in excess of required primary limits of liability.
- E. Pollution Insurance** *(this policy shall be applicable only to services/work involving hazardous materials).* Pollution insurance in an amount not less than \$2,000,000 combined single limit for any one occurrence, and \$5,000,000 annual aggregate. The policy shall include endorsements for abatement of all hazardous materials including, but not limited to, asbestos and lead containing materials.

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- F. Professional Liability Insurance.** Professional liability insurance in an amount not less than \$1,000,000 per claim with a \$2,000,000 annual aggregate. Insurance will be maintained in force for a period of three (3) years after substantial completion of the project.
- G.** All liability insurance shall insure performance by the Subcontractor of the indemnification provisions under Section 19 of the Agreement.
- H.** The minimum policy limits required in this Section are exclusive of costs of defense. The Service Provider's obligation to procure and maintain the insurance required in this Section 21, subparagraphs i-viii above is not in derogation of, nor in substitution for Service Provider's obligation to protect, defend, indemnify and save the Consortium harmless under those provisions or under the Indemnification clause, it being understood that Service Provider's obligation to protect, defend, indemnify and save the Consortium harmless are not dependent upon nor limited to the amount or availability of insurance proceeds.
- I. Additional Insured.** The Consortium shall be listed as additional insured on the Service Provider's policies for **all liability insurance, except worker compensation and professional liability**, required under the terms of this Agreement, and such liability insurance policies, including all primary policies and any excess/umbrella policies shall be primary to any primary and/or excess/umbrella liability insurance carried by the Consortium.
- J. Waiver of Subrogation.** All policies shall be endorsed to provide that underwriters and insurance companies of the Service Provider shall not have any rights to subrogate against the Consortium or the State of New Mexico.
- K. Certificates and Policies.** The Subcontractor shall furnish certificates of insurance evidencing compliance with the foregoing requirements, including the per project general aggregate, as a condition of initial prequalification as well as a condition of continued prequalification for the Contract period. Each Certificate will provide that:

"All coverage provided by this certificate is primary and noncontributory."

Premiums Responsibility. All policies shall be endorsed to provide that there will be no recourse against the Consortium for payment of the Service Provider's premiums.

20. Invalid Terms or Conditions

If any provision of this Agreement is unenforceable to any extent, the remainder of this subcontract, or any application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

21. Enforcement of Agreement

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

22. Notices

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

To the Consortium:

To the Service Provider: [insert name, address and email].

If Consortium issues a Rejection Notice where Service Provider reasonably believes the Service test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing to determine whether the test results conform to specifications. The date of Acceptance shall constitute the **"Effective Date."**

23. Authority

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last executed by either party hereto as indicated below.

Service Provider:

By:

Date:

Print Name:

Title:

Service Provider:

Consortium:

By:

Date:

Print Name:

Title:

Consortium:

NM CRS Number:

OCI Attachment 2014

New Mexico Public School Facilities Authority

ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL CLAUSE (January 2014)

- (a) Purpose. The Public School Facilities Authority's (PSFA) primary purpose of this clause is to aid in ensuring that the Service Provider (1) is not biased because of its past, present, or currently planned interests (financial, sub-contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

- (b) Scope. The restrictions described herein shall apply to performance or participation by the Service Provider and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Service Provider") in the activities covered by this clause as a prime Service Provider, Contractor, cosponsor, joint ventures, consultant, or in any similar capacity.
 - (i) The Service Provider shall be ineligible to participate in any capacity in PSFA contracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the Service Provider's performance of work under this contract. Furthermore, unless so directed in writing by the PSFA Authorized Representative, the Service Provider shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Service Provider is or has been substantially involved in their development or marketing

 - (ii) If the Service Provider under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Service Provider shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Service Provider shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by PSFA, in which case the restriction in this subparagraph shall not apply.

 - (iii) Nothing in this paragraph shall preclude the Service Provider from offering or selling its standard commercial items to PSFA.

- (1) Access to and use of information.

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- (i) If the Service Provider, in the performance of this contract, obtains access to information, such as PSFA plans, policies, reports, studies, financial plans, confidential internal data, or data which has not been released or otherwise made available to the public, the Service Provider agrees that without prior written approval of the PSFA it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the PSFA based on such information for a period of one (1) year after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to PSFA which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the PSFA.
 - (ii) In addition, the Service Provider agrees that to the extent it receives or is given access to proprietary data, data protected by state or federal law, or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Service Provider shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produced after the requirements of the instant subcontract have been met.

(c) Disclosure after award.

- (1) The Service Provider agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to PSFA that shall include a description of the action, which the Service Provider has taken or proposes to take to avoid or mitigate such conflicts.

PSFA may, however, terminate the contract for convenience if it deems such termination to be in the best interest of PSFA.

- (2) In the event that the Service Provider was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict, PSFA may terminate the contract for default.

(d) Lower-tier subcontracts.

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- (1) The Service Provider shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "subcontract", "Service Provider" and "PSFA Authorized Representative" shall be appropriately modified to preserve the PSFA/Government's rights.
- (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting or management support services work, the Service Provider shall obtain for the PSFA a disclosure statement or representation from each intended Service Provider or consultant. The Service Provider shall not enter into any lower-tier subcontract nor engage any consultant unless the PSFA shall have first notified the Service Provider that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of PSFA.
- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, PSFA may terminate the subcontract for default, disqualify the Service Provider for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.
- (f) Waiver. Requests for waiver under this clause shall be directed in writing to the PSFA and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of PSFA, the PSFA may grant such a waiver in writing.
- (g) Modifications. Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the subcontract are changed, PSFA will request, and Service Provider is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation

BROADBAND FIBER OPTICS/INTERNET SYSTEMS
SERVICES LEASE AGREEMENT

Project No: RFP #



Agreement No:

PRICING AND SERVICES LEASE AGREEMENT PART II

Deployment, Service and Access

THIS PART II OF THE AGREEMENT is the Telecommunications Services and Lease Agreement portion of this Agreement and is made and entered into by and between the _____ hereinafter referred to as the “**Consortium**” and _____, hereinafter referred to as the “**Service Provider**” and is effective as of the date set forth below upon which it is executed by the both parties.

That the intent and purpose that this Lease Agreement (inclusive of all associated pricing and services) is to establish a Lease Agreement (Agreement) for _____ and related services described herein (the “Services”) for use by, and benefit of the Consortium for E-rate eligible services.

The Service Provider has the experience, organization, human resources, financial, and technical ability to provide the work/services.

This Agreement, by this reference, incorporates to the same extent as if they were set out verbatim herein, the specifications and requirements of **RFP #** _____, its associated Addendums, Attachments, Volume II Cost Proposal submitted by the Service Provider, Section 1.0 Sections B through D, and Sections 4.0 through 25 of Part I of this Agreement.

Definitions:

Words, Phrases, and Terminology with unique and specific meaning within Service Provider’s operational environment may be incorporated herein, via an Attachment, by way of this reference: Said Attachment is hereby designated/titled as

https://nmopsfa.org/wordpress/wp-content/uploads/2020/05/Con5-2017-v1-2_DEFINITION_OF_TERMINOLOGY.pdf

PRICING AND SERVICES AGREEMENT PART II

1. Scope of Work

The Service Provider shall perform and provide the Services and Products contained in this Section, and such other services necessary for or incidental to the performance of Part II of this Agreement, in accordance with the Terms, Conditions, Requirements, Specifications, and Standards of this Agreement, **RFP #** _____ inclusive of Exhibit A, the applicable provisions of Part I of this Agreement, and the Service Provider's Proposal.

Any conflict between the contents of the Service Provider's Proposal, and the general or specific provisions of Part II of this Agreement, in regards to the services provided under this Section 1, the general or specific provision of Part I of this Agreement and **RFP#** _____ shall prevail.

The Service Provider shall provide qualified personnel (*qualified by applicable education, knowledge, or experience*) skilled in performing and completing all the services required to be provided under this Agreement. The Service Provider's principal, on any project, shall possess at least three years of supervisory/management hands-on experience in the technical area being serviced.

The Service Provider shall provide all applicable and appropriate Certificates of Insurance, Licenses, and all of the applicable Certification for the work/service before the commencement of the work.

- A.** Service Provider shall provide and perform all necessary, required components and services for the delivery of the services and products specified in this Agreement, Section 1 for the effective implementation, integration, delivery or, as applicable, the establishment of the services intended to be provided by the products and services:

Service Provider shall commence provisioning of the services listed herein as agreed upon in the Work Breakdown Structure (WBS) to be submitted by the Service Provider as outlined in Section 2 paragraph C of this Agreement.

Service Provider has proposed, and Consortium has accepted a identify term of contract for a identify type of service in detail. See RFP Scope of Work attached to this agreement as Exhibit A.

All applicable provisions of Service Provider's Technical Proposal *dated* _____ specifically commencing with Section 5.2 through Section 6, and Section 8 inclusive, are adopted herein and made a part of this Section 1 in the same manner as it was set-forth herein verbatim.

Nothing in this paragraph is intended, and shall not be interpreted to exclude or diminish the applicability of any Provision of the Technical Proposal not specifically mentioned herein.

Service Provider intends to construct, or is currently constructing a multi-conduit fiber optic communications system (the "Service Provider System") as generally described and depicted herein this Agreement.

Service Provider further intends to install within the conduits of the Service Provider System
(0) Strands count of fiber optic cable (the "Cable").

Fibers will be terminated at the points/locations identified in _____.

Service Provider desires to grant to Consortium a _____ right to use the stated fibers and other facilities described herein, all upon subject to the terms and conditions set forth in this Agreement.

Title.

B. Scope of Grant

2 Compensation

A. This is a _____-Year Fixed-Prices Lease Agreement.

The work to be performed under Part II of this Agreement will be funded/paid for in part by and through the Federal Communication Commission (FCC) E-rate Program by USAC, the Consortium shall pay the non-discounted share for Service Provider services satisfactorily rendered pursuant to the Scope of Work set-forth in this agreement, inclusive of all expenses

The total monthly recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed \$ _____ excluding New Mexico gross receipts taxes.

The total yearly/annual recurring cost, inclusive of the non-discounted amount, of this Agreement shall not exceed \$ _____ excluding New Mexico gross receipts taxes.

A.1. The New Mexico Gross Receipts tax to be levied on the **Firm-Fixed Price** total amount payable by the Consortium under this Agreement shall be at the rate of _____% or \$ _____ and shall be paid by Consortium to the Service Provider. The total **Annual Firm-Fixed Price** amount payable to the Service Provider under this Agreement, including gross receipts tax shall not exceed \$ _____.

The work performed under Part II of this Agreement is to be directly funded/paid in part under FCC/USAC E-rate Funding, it shall be the Service Provider's responsibility to submit invoices directly to USAC for the discount share of the approved eligible services. Service Provider hereby affirms that it meets, is fully knowledgeable and capable of all applicable FCC/USAC E-rate billing/invoicing requirements.

Service Provider shall be responsible for paying any and all taxes levied on amounts payable under this Agreement. For those taxes enumerated on Service Provider invoices payable by Consortium, the Service Provider will pay the taxing governmental agencies with funds received from Consortium for tax payment of said invoices. If an applicable Governmental Authority Tax Rate changes, during the life of this Agreement, Consortium shall amend this Agreement to cover government taxing authority's changes in applicable Tax Rates costs.

The amount set for in Paragraph A.1 of this Section 2 is the maximum amount and not a guarantee that the work assigned to be performed by Service Provider under Part I of this Agreement shall equal the amount stated. The parties do not intend for Service Provider to continue to provide services without compensation when the total compensation amount is reached. Service Provider is responsible for notifying the Consortium when the services provided under this Agreement reach the total compensation amount.

In no event shall Service Provider be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided. Consortium shall receive all invoices no later than 30 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date CANNOT BE PAID.

B. Service Provider shall be responsible for paying any taxes levied on amounts payable under this Agreement.

C. Invoicing / Compensation Schedule:

Subject to the condition precedent set forth in **Part II** of this Agreement, Consortium will make payments to the Service Provider. The progress payment amounts shall be based on the Consortium and Service Provider agreed upon Work Breakdown Structure (WBS) with assigned Schedules of Value (SOV) submitted by the Service Provider within two (2) weeks after award of this Agreement. The maximum monthly compensation amount under this Agreement shall not exceed the value established

under the submitted WBS/SOV, **including New Mexico Gross Receipts Tax**, for the portion of the Work performed and completed in the preceding month in accordance with monthly invoices prepared by Service Provider and as approved by Consortium.

The specified payable amount shall be based on and paid for upon satisfactory completion of services under this agreement. For services contained in the WBS/SOW that are not satisfactorily completed, payment shall be payable for the portion satisfactorily completed.

Service Provider must submit detailed statements accounting for all services performed, goods obtained, and expenses incurred. Invoices must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Service Provider shall certify that labor charges to the contract are direct charges and shall maintain records of wages, dates worked, and hours worked to support the certifications. If the Consortium finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Service Provider that payment is requested, and (ii) all supporting documentation, the Consortium shall provide the Service Provider a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Service Provider may take to provide remedial action. Upon the Consortium's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, Consortium shall tender payment to the Service Provider within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Consortium shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

It is anticipated that some or all of the Consortium's costs under this Agreement shall be eligible for the "E-Rate" discount under the Federal Communications Commission (FCC) Universal Service Provision. Accordingly, contingent upon the Consortium's receipt of a funding commitment decision letter (FCDL) from SLD/USAC and both Consortium's and Service Provider's compliance with all the SLD/USAC guidelines, the vendor shall offer an SLD/USAC discounted invoice payment option. In providing the two-tier billing system or discounted invoice payment option, Service Provider will be required to recover its compensation for the approved E-Rate eligible discounted services, which can be from twenty percent (20%) up to ninety percent (90%), directly from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC) in accordance with procedures established by the FCC and SLD/USAC. The Service Provider's invoices will itemize/breakdown the costs of all E-Rate eligible products and/or services from all non-E-Rate eligible products and/or services. To determine which items are eligible, visit the SLD/USAC E-Rate eligible services list

<https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-list/>

C-1. Exclusion of Liability for E-Rate Funding.

The Consortium shall have no liability for the E-Rate Portion of any costs incurred by the Service Provider's invoice if one of the following occurs:

- a. Products or services billed to the SLD are deemed ineligible pursuant to any event, including but not limited to an audit, after the SLD has reimbursed the Offeror for products or services that were previously considered eligible.
- D. The vendor fails to adhere properly to SLD guidelines (e.g., missing a filing deadline for invoicing to the SLD), or is subject to the FCC "Red Light Rule" and subsequently is not paid by the SLD.
- E. *Monthly Service Fee.* Service Provider shall invoice Consortium each month for its portion of the monthly recurring charges as delineated in Attachment A of this Agreement. Consortium, in Attached Service Provider's Cost Proposal of this Agreement. Consortium shall pay the non-discounted monthly portion of the Monthly Service Fee (i.e., the portion of the Monthly Service Fee not covered by USAC) within thirty (30) days of receipt of the invoice.
- F. *Failure to Pay.* If Consortium fails to pay the Monthly Service Fee within thirty (30) calendar days of the date received, Service Provider may impose a late fee. The late payment fee shall be one and one half percent (1-1/2%) of the unpaid balance due.
- G. Notwithstanding the foregoing, if Consortium's failure to pay is due to the inability, through no fault of its own, to collect the matching payments from the state of New Mexico or from USAC, then Consortium shall be exempt from any such late fee(s) for such period of time, however long, that corresponds to the delay in collecting such payments.
- H. E-Rate Applications. Consortium shall make every reasonable effort to obtain and maintain E-Rate Funding throughout the Term of this Agreement. Failure of Consortium to file all appropriate paperwork within established USAC deadlines and perform all administrative tasks to obtain and maintain E-Rate Funding may result in Consortium becoming liable to Service Provider for the discounted services actually delivered.

3. Term

THIS LEASE AGREEMENT SHALL BECOME EFFECTIVE AFTER APPROVAL BY ALL PARTIES (Service Provider and Consortium), ON THE (FIRST DAY OF THE MONTH FOLLOWING THE SUBMITTAL DATE OF THE WRITTEN NOTICE OF ACCEPTANCE FROM THE CONSORTIUM (which is defined as, all circuits are turned over, accepted). This Lease Agreement shall terminate identify terms after the commencement of the Services, unless terminated pursuant to Part I of this Agreement Section 4 (Termination), or Section 5 (Appropriations).

Force Majeure. Neither Party shall be liable to the other Party, and each Party's performance under this Agreement shall be excused, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following

conditions, and such Party's performance of such obligations shall be excused and extended for and during the period of any such delay: act of God; fire, flood, shortages or unavailability or other delay in material delivery not resulting from the responsible Party's failure to timely place orders therefore; lack of or delay in transportation; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of a Party to obtain rights of way, easements, building access or other rights from private property owners; inability of Service Provider to obtain access to the Service Provider System; or any other cause beyond the reasonable control of such Party (each a "**Force Majeure Event**"). The Party claiming relief under this Section shall notify the other in writing of the existence of the event relied on, the estimated duration and the cessation or termination of said event, and the Party claiming relief shall exercise all reasonable efforts to minimize the time of any such delay.

4. Acceptance and Documentation

1. **Acceptance.** Consortium shall be deemed to have accepted and to be in possession of the fibers upon the Effective Date pursuant to the procedures set forth below.

(a) **Installation and Delivery.** Service Provider will install and deliver the fibers on or before the ready for Service Date provided in the WBS (see Section 2 compensation, Section C, supra.).

(b) **Acceptance Process.** Upon completion of the installation and delivery of the fibers, Service Provider will notify Consortium that the Consortium fibers are ready for acceptance testing (Completion Notice). Service Provider's notice must include with the Completion Notice the results of Service Provider testing. Within ten (10) business days of receipt of a Completion Notice, Consortium shall provide Grantor with a written notice accepting or rejecting the fibers. Consortium shall have the right to independently test the fibers during the ten (10) business day period, provided that Service Provider shall have the right to be present at any such independent testing. Acceptance of the fiber shall be accomplished by a written Notice of Acceptance from the Consortium.

Issuance of an Acceptance Notice or failure to issue an Acceptance/Rejection Notice within the ten (10) business day period shall constitute unconditional and irrevocable Acceptance of the _____ fiber for all purposes under this Agreement by Consortium as of the 11th day.

Consortium may reject the Buyer Fibers only if they do not conform to the Specifications and Performance Standards, in which case Service Provider will promptly undertake to investigate and correct any deficiency or non-conformity in the fibers. Thereafter, Service Provider shall again conduct testing of the _____ fibers from access point to access point. The foregoing procedure shall apply again and successively thereafter until Service Provider has remedied all defects or failures and Service Provider has received written notice from Consortium that the _____ fiber conforms to the Specifications and Performance Standards, provided. However, if Consortium delivers to Service Provider any subsequent Rejection Notices after the initial ten (10) business day period, within ten (10)

business days after receipt of the relevant test results from Service Provider, the Consortium shall be deemed to have Accepted the _____ Fibers.

If Consortium issues a Rejection Notice where Service Provider reasonably believes the fiber test results conform to the Testing and Acceptance Standards, the parties shall work together to do cooperative testing to determine whether the test results conform to specifications. The date of Acceptance shall constitute the “**Effective Date.**”