

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 16Ordinance/Resolution #10-11-568For Meeting of _____
(Ordinance First Reading Date)For Meeting of June 6, 2011
(Adoption Date)

TITLE: A RESOLUTION APPROVING AN INDEFINITE QUANTITY, INDEFINITE COST PRICE AGREEMENT FOR CISCO SMARTNET SUPPORT TO INX, INC.

PURPOSE(S) OF ACTION:

To approve the purchase of price agreement for Cisco SmartNet Support.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Scott Marr	<u>Department/Section:</u> Information Technology	<u>Phone:</u> 541-2032
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Information Technology Department uses Cisco equipment to provide voice and data services to City staff. It is necessary that a support contract with Cisco be in place in order to obtain technical support, software updates, and advanced replacement of failed hardware. This support contract is renewed annually to provide coverage for key equipment within the City network. This support contract will need to be in place as long as the City uses Cisco equipment for voice and data services.

The Information Technology Department requests approval for an indefinite quantity of Cisco maintenance and support renewals conditioned upon annual approved budgets.

This is the annual renewal of the Cisco SmartNet support agreement for City's voice and data networking equipment awarded to INX Inc. of Albuquerque, New Mexico, using the State of New Mexico Price Agreement #90-000-00-01008BF.

SUPPORT INFORMATION:

1. Resolution 10-11-568.
2. Exhibit "A", (Purchasing Manager's Request to Contract).
3. Attachment "A", (City Manager Former Approval 10-11-328).
4. Attachment "B", (State Price Agreement 90-000-00-01008BF).

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.	
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: in the amount of \$_____ for FY_____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Hardware Maint	10240030-721124	\$58,323	\$60,000	\$1,676	Other hardware maintenance expenses

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will authorize the purchase of continuing support for existing Cisco voice and data equipment.
2. Vote "No"; this will discontinue vendor support for existing Cisco voice and data equipment.
3. Vote to "Amend"; staff will proceed as directed by City Council.
4. Vote to "Table"; this would cause the City to be without support for existing Cisco voice and data equipment.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 10-11-568

A RESOLUTION APPROVING AN INDEFINITE QUANTITY, INDEFINITE COST PRICE AGREEMENT FOR CISCO SMARTNET SUPPORT TO INX, INC.

The City Council is informed that:

WHEREAS, the Information Technology Department uses Cisco equipment to provide voice and data services to City staff; and

WHEREAS, it is necessary that a support contract with Cisco be in place in order to obtain technical support, software updates, and advanced replacement of failed hardware; and

WHEREAS, this support contract is renewed annually to provide coverage for key equipment within the City network; and

WHEREAS, this support contract will need to be in place as long as the City uses Cisco equipment for voice and data services.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the renewal for Cisco SmartNet support agreement is approved.

(II)

THAT the Purchasing Manager is authorized to contract with INX, Inc. as outlined in the signed Exhibit "A", Purchasing Manager's Request to Contract form.

(III)

THAT City staff is hereby authorized to do all deeds necessary in accomplishment of the herein above.

DONE AND APPROVED this ____ day of _____, 2011.

APPROVED:

Mayor

ATTEST:

(SEAL)

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

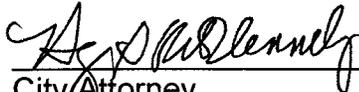
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

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CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: June 6, 2011

Resolution No.: 10-11-568

**Existing Contract Purchase For
Indefinite Quantity, Indefinite Cost Price Agreement to
INX, Inc., For Cisco SmartNet Support**

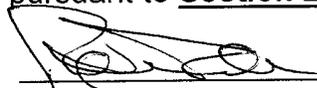
The Las Cruces City Council is provided the following information concerning this request:

RFP/BID SOLICITATION INFORMATION:

- | | |
|---|---|
| 1. Existing Contract Issuer: | State of New Mexico |
| 2. Contract Number: | No. 90-000-00-01008BF |
| 3. Contract Expiration Date: | December 10, 2011 |
| 4. Description: | Cisco SmartNet Support |
| 5. Using Department: | IT |
| 6. Current Award Recommendation To: | INX, Inc., of Albuquerque, NM |
| 7. Award Amount (includes any tax and contingency): | Indefinite Quantity
Indefinite Cost |
| 8. Contract Duration: | December 28, 2008 thru December 10, 2011 |
-

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-316**.



Purchasing Manager

15/20/2011

Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	No. 11103781
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REQUEST APPROVAL TO CONTRACT
FOR

PRICE AGREEMENT: Data-Wide/Local Area Network Equipment And Services

PROCUREMENT INFORMATION:

1. Using Department:	<u>Information Technology</u>
2. Current Authorizing Resolution No.	<u>None : Contract less than \$50,000.00</u>
3. Existing Contract Number & Expiration:	<u>SPD No. 90-000-00-001008BF/December 10, 2010</u>
4. Existing Contract Issuing Agency:	<u>City of Las Cruces</u>
5. Current Award Recommendation To:	<u>INX, Inc., of Albuquerque, NM</u>
6. Current Total Contract Cost	<u>\$49,997.15</u>
7. Current Contract Period:	<u>December 11, 2009 To December 10, 2010</u>
8. Current Requisition Number:	<u>11100180</u>
9. Current Folder:	<u>No. 10-11-328</u>

DEPARTMENTAL RECOMMENDED ACCEPTANCE:

Purchasing:


Signature

7/9/10
Date

Administration:

Signature

Date

Community Development:

Signature

Date

Facilities:

Signature

Date

Finance:

Signature

Date

Information Technology:

Signature

Date

Legal:

Signature

Date

MVRDA/SCSWA/Municipal Court

Signature

Date

Public Safety:

Signature

Date

Public Services:

Signature

Date

Public Works:

Signature

Date

Utilities:

Signature

Date

BUDGET AVAILABILITY:


OMB Signature

7/20/10
Date

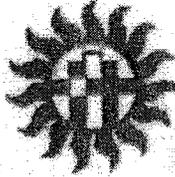
Fund Source(s)	Current Balance	Funds to Be Encumbered
10240030-721124	\$74,590	\$49997.15
	→ \$100,000 RPL	

CITY MANAGER/BOARD CHAIR APPROVAL:


City Manager / Board Chair

7/21/10
Date

NOTE: After City Manager or Board Chair approval, please return to Purchasing Section.



CITY OF LAS CRUCES
Information Technology Department

TO: Terri Del Ferraro, Buyer
THRU: Scott Marr, Network Manager
SUBJECT: Acceptance Memo for Cisco SmartNet Renewal
DATE: July 6, 2010

This is a request to utilize NM State Agreement for Data-Wide/Local Area Network Equipment and Services SPD#90-00-00-001008BF awarded to INX, Inc. of Albuquerque, NM in the amount of 49,997.15; quote # 16020376.

This quote contains Cisco maintenance contract renewals that are needed to support continued operations of our existing Cisco network equipment. Therefore, the support and maintenance contract in the amount of \$49,997.15 is necessary and should be charged to 10240030-721124.

A handwritten signature in cursive script that reads "Scott Marr".

/dg



State of New Mexico
General Services Department
Purchasing Division

Statewide Price Agreement Amendment

Awarded Vendor
0000044764
INX Inc.
1720 Louisiana Blvd. NE #301
Albuquerque, NM 87110

Telephone No. (505) 256-9047

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: Three

Term: December 28, 2008 – December 10, 2011

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Invoice:
As Requested

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

Title: Data Wide/Local Area Network

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately.

Please see updated ESS schedule.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: 03/18/11

am

um



STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

Awarded Vendor
0000044764
INX Inc.
1720 Louisiana Blvd. NE #301
Albuquerque, NM 87110

Telephone No. (505) 256-9047

**Price Agreement
Amendment**

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: Two

Term: December 28, 2008-December 10, 2010

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public bodies
allowed by law.

Invoice: As requested

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

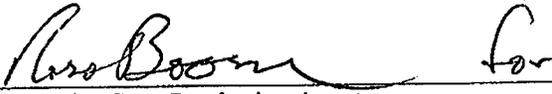
Commodity: Data Wide/Local Area Network

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from December 11, 2010 to December 10, 2011 at the same price, terms and conditions.

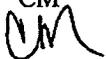
Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico


New Mexico State Purchasing Agent

Date: 11/22/2010

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

CM




STATE OF NEW MEXICO
GENERAL SERVICES DEPARTMENT
PURCHASING DIVISION

Awarded Vendor
(0000044764)
INX Inc.
1720 Louisiana Blvd NE #301
Albuquerque, NM 87110

Telephone No. (505) 256-9047

**Price Agreement
Amendment**

Price Agreement Number: 90-000-00-01008BF

Price Agreement Amendment No.: One

Term: December 28, 2008 - December 10, 2009

Ship To:
All State of New Mexico Agencies, Commissions,
Institutions, Political Sub-Divisions and Local Public
Bodies allowed by Law.

Invoice:
As requested

Procurement Specialist: Gerrie Becker 

Telephone No.: (505) 476-3121

Commodity: Data Wide/Local Area Network

~~This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.~~

In accordance with Contract provisions, and by mutual agreement of all parties, this Price Agreement is extended from December 11, 2009 to December 10, 2010 at the same price, terms and conditions.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico



New Mexico State Purchasing Agent

Date: 11/25/09

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

AB



2008 DEC 16 PM 4: 18

STATE OF NEW MEXICO
STATEWIDE PRICE AGREEMENT

DATA WIDE/LOCAL AREA NETWORK SYSTEMS
EQUIPMENT & SERVICES
Manufacturer: Cisco

PRICE AGREEMENT NUMBER: 90-000-00-01008BF

THIS PRICE AGREEMENT is made and entered into by and between the State of New Mexico, State Purchasing Division, and Department of Information Technology, hereinafter referred to as the "Procuring Agency" and INX Inc., hereinafter referred to as the "Contractor" and collectively referred to as the "Parties.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of this Agreement, the Contractor's proposal including any best and final offers, and the RFP are hereby incorporated by reference in this contract. In case of any conflict with the reference documents, the order of precedence shall be this Agreement, the Contractor's proposal including any best and final offers, then the RFP.

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

ARTICLE 1 - DEFINITIONS

- A. **"Acceptance"** shall mean the approval, after Quality Assurance, of all Deliverables by an executive level representative ("Executive Level Representative") of the Procuring Agency.
- B. **"Change Request"** shall mean the document utilized to request changes or revisions in the Scope of Work.
- C. **"Chief Information Officer ("CIO")"** shall mean the Secretary/CIO of the Department of Information Technology for the State of New Mexico or designated representative.
- D. **"Deliverable"** shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- E. **"DoIT"** shall mean the Department of Information Technology.
- E. **"DFA"** shall mean the Department of Finance and Administration; **"DFA/CRB"** shall mean the Department of Finance and Administration, Contracts Review Bureau.
- F. **"Escrow"** shall mean a legal document (such as the software source code) delivered by the contractor into the hands of a third party, to be held by that party until the performance of a condition is accepted; in the event contractor fails to perform, the grantee agency receives the legal document, in this case, source code.
- G. **"Enhancement"** means any modification or addition that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an Error Correction. After conferring with Procuring Agency, an Enhancement may be identified as minor or major
- H. **"Executive Level Representative"** shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives.
- I. **"Know How"** shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals,

records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

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

K. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a project and the project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.

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

M. "Performance Bond" shall mean a surety bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract.

N. "Project" shall mean a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the Executive Level Representative and verified by the agency CIO to the DoIT.

O. "Project Manager" shall mean a qualified person from the Procuring Agency responsible for all aspects of the Project or the administration of this Agreement.

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

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

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

ARTICLE 2 – SCOPE OF WORK

A. The scope of work shall be for Data Wide/Local Area Network Systems Equipment & Services to interface with current and future telecommunications systems for the Department of Information Technology. The scope also includes cost effective telecommunication systems that would be advantageous to the State of New Mexico in meeting the future challenges. This includes products and services that must be compatible with current Data Wide/Local Area Network Systems Equipment, user training, and installation.

The Price Agreement(s) resulting from this procurement for Data Wide/Local Area Network Systems Equipment & Services may be used statewide by the executive, judicial and legislative branches of government as well as local governments and public educational entities.

B. Performance Measures. Contractor shall substantially perform the Performance Measures set forth in Attachment A. In the event the Contractor fails to obtain the results described in Attachment A, the Procuring Agency may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6.

D. License. Contractor hereby grants Procuring Agency a non-exclusive, irrevocable, perpetual license to use, modify, and copy the software as defined in Article 2 and Attachment A.

The right to copy the software is limited to the following purposes: archival, backup and training. All archival and backup copies of the software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1) Contractor agrees to maintain, at contractor's own expense, a copy of the software source code to be kept by an escrow agent and to list the Procuring Agency as an authorized recipient of this source code. The source code shall be in magnetic form on media specified by the Procuring Agency. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the software at the current revision level. Included with the media shall be all associated documentation which will allow the Procuring Agency to top load, compile and maintain the software in the event of a breach.

2) If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the licensed software it provided the Agency; or, if this Agreement is terminated, or if the Contractor breaches this Agreement, the Contractor shall make available to the Procuring Agency: 1) the latest available licensed software program source code and related documentation meant for the licensed software provided or developed under this Agreement by the Contractor and listed as part of the purchase system; 2) the source code and compiler/utilities necessary to maintain the system; and, 3) related documentation for software developed by third parties to the extent that the Contractor is authorized to disclose such software. In such circumstances, Procuring Agency shall have an unlimited right to use, modify and copy the source code and documentation.

ARTICLE 3 - COMPENSATION

A. Compensation Schedule. The Procuring Agency shall pay to the Contractor based upon fixed prices for the Deliverables, per the schedule outlined in Attachment A.

B. Payment. Contractor hereby agrees to perform work at or below the published maximum rates of the price agreement as indicated in Attachment A.

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

C. Taxes. The Contractor shall not be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, nor interest or penalties assessed on the

Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

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

D. Retainage. The Procuring Agency may retain twenty percent (20%) of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance under the terms of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. Not Applicable

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Attachment A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Project Manager.

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

- 1.) Complies with the Deliverable requirements as defined in Article 2 and Attachment A
- 2.) Complies with the terms and conditions of the RFP;
- 3.) Meet the performance measures for the Deliverable(s) and this Agreement;
- 4.) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
- 5.) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or designee, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within thirty (30) business days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the thirty (30) day business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (30) days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt

of comments, the Contractor will have fifteen (15) business days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within thirty (30) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND SPD. This Agreement shall terminate on December 10, 2009 unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall exceed five years, except as set forth in Section 13-1-150 NMSA 1978.

The initial term of the Price Agreement(s) shall be for one calendar year. After the first year, the DoIT in cooperation with the SPA reserves the option of renewing any of the initial price agreement(s) on an annual basis for up to four (4) additional one-year terms. In no case will the price agreement(s), including all renewals thereof, exceed a total of five (5) years in duration. The proposed prices shall not increase for the first year and will only be adjusted by mutual agreement thereafter.

ARTICLE 6 – TERMINATION

This Agreement may be terminated as follows:

A. **General.** By the either Party upon written notice to be delivered to the other party not less than ten (10) business days prior to the intended date of termination.

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

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

CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

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

- 1.) Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency.
- 2.) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the Procuring Agency;
- 3.) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
- 4.) Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
- 5.) Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
- 6.) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency programs;
- 7.) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction.
- 8.) Should this Agreement terminate due to the Contractor's default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new contractor/subcontractors at potentially higher rates and for other costs incurred.
- 9.) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall assist and cooperate with the Procuring Agency in the orderly and timely transfer of files, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Project Manager, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

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

ARTICLE 8 –INDEMNIFICATION

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

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

ARTICLE 9 – INTELLECTUAL PROPERTY

A. **Ownership.** Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Know How. The Procuring Agency shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency. Contractor shall notify the Procuring Agency, within fifteen (15) business days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the Procuring Agency and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Procuring Agency. If, by judgment of a court of competent jurisdiction, Intellectual Property, Know How, or Know How Rights are not deemed to be created or owned by the Procuring Agency, Contractor hereby acknowledges and agrees to grant to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

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

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

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

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

ARTICLE 11 - WARRANTIES

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

B. **Software.** The Contractor warrants that any software or other products delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for the warranty

period as indicated in the Equipment Services Schedule (ESS) after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

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

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

ARTICLE 13 – STATUS OF CONTRACTOR

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

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

ARTICLE 14 - CHANGE MANAGEMENT

Not Applicable.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

Not Applicable

ARTICLE 16 – DEFAULT/BREACH

In case of default and/or breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

ARTICLE 17 – EQUITABLE REMEDIES

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

ARTICLE 18 - LIABILITY

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

ARTICLE 19 – ASSIGNMENT

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

ARTICLE 20 – SUBCONTRACTING

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the

Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.

ARTICLE 21 – RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

ARTICLE 22 – CONFIDENTIALITY

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

ARTICLE 23 – CONFLICT OF INTEREST

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

ARTICLE 24 - RECORDS AND AUDIT

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

ARTICLE 25 - AMENDMENT

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

ARTICLE 26 – New Mexico Employees Health Coverage

1. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

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

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

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Contractor 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.

3. Contractor 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 <http://insurenwnewmexico.state.nm.us/>.

4. 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, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

ARTICLE 27 - MERGER, SCOPE, ORDER OF PRECEDENCE

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such

fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

D. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Procuring Agency's main office is located. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

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

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

ARTICLE 30 - SURVIVAL

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

ARTICLE 31 - TIME

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

ARTICLE 32 - FORCE MAJEURE

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

ARTICLE 33 - NOTICE OF PENALTIES

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

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

By: [Signature] Date: 12-11-08
Marlin Mackey, Secretary/CIO
Department of Information Technology

By: [Signature] Date: 12/8/08
Ted Bonnell
Vice President of Southwest Region
INX Inc.

Approved for legal sufficiency:
By: [Signature] Date: 12/11/08
Victoria B. Garcia, General Counsel
Department of Information Technology

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

CRS ID Number: 03-045509-000

By: [Signature] Date: 12/15/08
Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with all pertinent statutory laws defining the mission and authority of the Department of Information Technology and all Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: [Signature] Date: 12-11-08
Marlin Mackey, Secretary
Department of Information Technology

This Agreement has been approved by the SPA:

By: [Signature] Date: 12-23-08
Michael Vinyard
Purchasing Agent for the State of New Mexico

ATTACHMENT A
DATA WIDE/LOCAL AREA NETWORK SYSTEMS EQUIPMENT &
SERVICES
Manufacturer: Cisco

**DATA WIDE/LOCAL AREA NETWORK SYSTEMS
EQUIPMENT AND SERVICES**

Best and Final Offer

**COST WAN/LAN NETWORK DATA
EQUIPMENT SERVICES**

Costs for Wide Area/Local Network Data Equipment & Services Form

Offeror Name: INX, Inc.

Changes to Original RFP Response:

C.1.a Hardware Costs:

37.25% off then current Manufacturers Published List Price for hardware. If other than percentage off Published List Price, please describe. Identify the Manufacturers published price list referenced.

13.25% off then current Manufacturers Published List Price for maintenance (Smartnet)

C.1.b Software Costs:

37.25% off then current Manufacturers published list price for software if applicable. If other than percentage off published list price, please describe. Identify the Manufacturers published price list referenced.

APPENDIX I

OFFEROR RESPONSE ADDITIONAL TECHNICAL SERVICE FORM FOR

Data Wide/Local Area Network Equipment & Services

Offeror Name: INX, Inc.

Changes to Original RFP Response:

Additional Job Classification Description	*Experience Level	Maximum Hourly Rate
Network Management Services	6 years	Cost To Be Determined Based on Project Scope of Work
Network Support Services	7 years	Cost To Be Determined Based on Project Scope of Work

*Experience Level =

Junior level is (between) 1 – 4 years

Mid level is (more than) 4 years (less than) 7 years

State of New Mexico Data Wide/Local Area Network Equipment and Services ESS Contract

INX Professional Services	Contract Price
INX Technician I Onsite Technical and Implementation Support	\$95.00
INX Engineer I Design and Support Engineer	\$125.00
INX Engineer II Design and Support Engineer	\$150.00
INX Engineer III Design and Support Engineer	\$175.00
INX Engineer IV Design and Support Engineer	\$200.00
INX Project Manager Project Management	\$150.00
INX Training INX Training Network	\$95.00
INX-NMS Network Management Services	TBD based on Project Scope of Work
INX-NSS Network Support Services	TBD based on Project Scope of Work

Manufacturer 90 Day Warranty on Product