

**COMMUNITY PROGRAMS  
DEVELOPMENTAL DISABILITIES SUPPORTS DIVISION  
OF THE  
NEW MEXICO HEALTH CARE AUTHORITY**

**REQUEST FOR PROPOSALS (RFP)**

**Home and Community Based Services Rate Study**



**HEALTH CARE  
A U T H O R I T Y**

**RFP#25-630-0700-0004**

RFP Release Date: October 7, 2024

Proposal Due Date: November 13, 2024

**ELECTRONIC-ONLY PROPOSAL SUBMISSION**

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# **I. INTRODUCTION**

## **A. PURPOSE OF THIS REQUEST FOR PROPOSALS**

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of a professional organization that specializes in economics, statistics, and actuaries with experience in health care financing and financial modeling specific to Home and Community Based Services waiver programs to conduct a rate study and make recommendations.

## **B. BACKGROUND INFORMATION**

The mission of the Developmental Disabilities Supports Division is to serve those with intellectual and developmental disabilities by providing a comprehensive system of person-centered community supports to that individuals live the lives they prefer, where they are respected, empowered, and free from abuse, neglect, and exploitation.

The Medical Assistance Division and the Developmental Disabilities Supports Division administers and operates respectively four (4) 1915 (c) Medicaid Home and Community Based Services waiver programs through the Health Care Authority, the single state Medicaid agency. The DDSDD receives appropriations authorized by the New Mexico State Legislature each year to administer the Developmental Disabilities, Mi Via, Medically Fragile, and Supports waiver programs.

Across the four Medicaid waiver programs, DDSDD supports over 7500 people for total expenditures of approximately \$270 million in state FY24. During that same time, there were 4318 people enrolled on the Developmental Disabilities (DD) Waiver (traditional comprehensive waiver), 3176 on the Mi Via Waiver (self-directed), 162 people on the Medically Fragile (MF) Waiver (for medically fragile children under the age of 21,) and 4 people on the Supports Waiver. DDSDD contracts with over 200 provider agencies.

Most of the claims for DD, Mi Via, SW, and MF waivers are processed through the Health Care Authority's Medicaid Management Information System (MMIS) under a contract with Conduent.

As required by the Centers for Medicare and Medicaid Services (CMS), DDSDD, through this Request for Proposal (RFP), will be conducting a rate setting process to identify recommendations on payment amounts to providers for the provision of waiver services.

In 2024, the New Mexico Legislature passed House Bill 395 which requires DDSDD, contingent upon available funding, under Section 28-16A-3 NMSA 1978 (being Laws 1993, Chapter 50, Section 3, as amended) to conduct independent biennial cost studies for the purpose of recommending reimbursement rates for all service providers.

The Department of Workforce Solutions Paid Family and Medical Leave Act may have implications to the waivers' provider network and needs to be analyzed and included in the rate study work.

Additionally, updated regulations from the Fair Labor Standards Act required salaried workers be paid a rate of time and a half for overtime work. This will impact DDSD's waiver provider network and needs to be analyzed and included in this next rate rebasing effort.

### **C. SCOPE OF PROCUREMENT**

The Agency, DDSD, is seeking a professional organization that specializes in economics, statistics, and actuaries with experience in health care financing and financial modeling specific to Home and Community Based Services (HCBS) waiver programs. The term of the resulting contract will be for four years. The resulting contract may be a single award.

The scope of procurement encompasses the defined Scope of Work described herein with a contract term upon signature of the New Mexico Contracts Review Bureau (CRB). This procurement will result in a contract with a term of four years.

DDSD is requesting proposals from agencies and individuals to provide the following services and projects (see section IV.A. for details of each service/project) for:

#### **Home and Community Based Services Rate Study**

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**

The New Mexico Health Care Authority 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: Arnold Sanchez, Procurement Manager  
Telephone: (505) 629-8358  
Email: [Arnold.Sanchez@hca.nm.gov](mailto:Arnold.Sanchez@hca.nm.gov)

1. **Any inquiries or requests** regarding this procurement must be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the HCA.

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

## E. PROPOSAL SUBMISSION

*All deliveries of proposals Must be submitted via the NMHCA Bonfire Procurement Portal. Only electronic submittals in the Bonfire Procurement Portal will be accepted for this RFP. Refer to Section III.B.1 for instructions.*

[NMHCA Bonfire Procurement Portal](#)

## F. DEFINITION OF TERMINOLOGY

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

1. **“Advisory Council on Quality Supports for Individuals with Developmental Disabilities and their Families”** advises the New Mexico Department of Health (ACQ) on the system guiding the provision of services and supports that assist people with disabilities and/or Developmental Disabilities (I/DD) of all ages and their families to be fully included in New Mexico communities.
2. **“Agency”** means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
3. **“Award”** means the final execution of the contract document.
4. **“Business Hours”** means weekdays (Monday – Friday) 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
5. **“Centers for Medicare and Medicaid Services (CMS)”** is a federal agency within the United States Department of Health and Human Services (HHS) that administers the Medicare program and works in partnership with state governments to administer Medicaid, the Children's Health Insurance Program (CHIP), and health insurance portability standards.
6. **“Centers for Medicare and Medicaid Services (CMS) Final Settings Rule”:** The CMS published a Final Rule addressing several sections of the Social Security Act. The Final Rule amends the federal regulations which govern 1915 (c) Home and Community Based Services (HCBS) waiver programs. The CMS Final Settings Rule support inclusion and integration of people with I/DD in the community.

7. "**Central purchasing office**" means that office within a state Agency or a local public body responsible for the control of procurement of items of tangible personal property, services, or construction. "Central purchasing office" includes the purchasing division of the general services department.
8. "**Close of Business**" means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
9. "**Confidential**" means confidential financial information concerning Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror's submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
10. "**Contract**" means any agreement for the procurement of items of tangible personal property, services or construction.
11. "**Contractor**" means any business having a contract with a state agency or local public body.
12. "**Determination**" means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
13. "**Desirable**" – the terms "may," "can," "should," "preferably," or "prefers" identify a desirable or discretionary item or factor.
14. "**Electronic Submission**" means a successful submittal of Offeror's proposal in the HCA Bonfire portal.
15. "**Electronic Version/Copy**" means a digital format consisting of text, images or both, readable on computers or other electronic devices, which includes all content that the Original document contains. The electronic version/copy CANNOT be emailed.
16. "**Evaluation Committee**" means a body appointed to perform the evaluation of Offerors' proposals.
17. "**Evaluation Committee Report**" means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee's recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
18. "**Final Award**" means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.

19. **“Finalist”** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee, as explained in Section II.B.8.
20. **“Health Care Authority”** serves over 800,000 New Mexicans by administering several large state and federally funded programs including Medicaid, Temporary Assistance for Needy Families (TANF), Food Stamps, and Child Support Enforcement.
21. **“Home and Community-Based Services (HCBS)”**: Home and community-based services (HCBS) provide opportunities for Medicaid beneficiaries to receive services in their own home or community rather than institutions or other isolated settings. These programs serve a variety of targeted populations groups, such as people with I/DD, physical disabilities, and/or mental illnesses. HCBS Waiver programs must: demonstrate that providing waiver services won’t cost more than providing these services in an institution, ensure the protection of people’s health and welfare, provide adequate and reasonable provider standards to meet the needs of the target population, and ensure that services follow an individualized and person-centered plan of care.
22. **“Home Care Final Rule”**: The Department of Labor issued the Home Care Final Rule to extend minimum wage and overtime protections to home care workers.
23. **“Mandatory”** – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
24. **“Medical Assistance Division”** of the Health Care Authority manages and administers the Medicaid program.
25. **“Medically Fragile Waiver”** is a 1915 [42 U.S.C. 1396n] (c) home and community-based services Medicaid waiver that serves individuals who have been diagnosed with a medically fragile condition before reaching age 22, and who have a developmental disability or delay, or who are at risk for developmental delay. A medically fragile condition is defined as a chronic physical condition which results in a prolonged dependency on medical care for which daily skilled nursing intervention is medically necessary.
26. **“Mi Via Waiver”** is a 1915 [42 U.S.C. 1396n] (c) home and community-based Medicaid waiver that is person-centered, community-oriented approach to deliver services and supports that assist eligible children and adults with Intellectual and Developmental Disabilities (IDD) or Medically Fragile conditions to participate as active members of their communities. It is intended to provide a community-based alternative to institutional care that facilitates greater participant’s choice, direction and control over services and supports.
27. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
28. **“Multiple Source Award”** means an award of a contract for one or more items of tangible personal property, services or construction to more than one Offeror.

29. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
30. **“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
31. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
32. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to procure items of tangible personal property, services or construction from the agreement(s) awarded as a result of this RFP.
33. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
34. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
35. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
36. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
37. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
38. **“Sealed”** means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents has been completely and successfully uploaded into HCA’S electronic procurement portal bonfire system prior to the submission deadline stated in the RFP.

39. “**Staff**” means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
40. “**State (the State)**” means the State of New Mexico.
41. “**State Agency**” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
42. “**State Purchasing Agent**” means the Director of the Purchasing Division of the General Services Department.
43. “**Statement of Concurrence**” means an affirmative statement from the Offeror indicating its response to a required Section IV specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal, pursuant to Section III.C.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
44. “**Traditional Developmental Disabilities Waiver**” is a 1915 [42 U.S.C. 1396n] (c) home and community-based services Medicaid waiver that is intended for eligible recipients who have developmental disabilities limited to intellectual disability (ID) or a specific related condition as determined by the DOH-DDSD. The developmental disability must reflect the person’s need for a combination and sequence of special interdisciplinary or generic treatment or other supports and services that are lifelong or of extended duration and are individually planned and coordinated. The individual must also require the level of care provided in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), in accordance with 8.313.2 NMAC and meet all other applicable financial and non-financial eligibility requirements.
45. “**Unredacted**” means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
46. “**Written**” means typed in standard 8 ½ x 11 inch document format, by common electronic means (such as Microsoft Word, Adobe PDF, etc.). A larger size document is permissible for charts, spreadsheets, etc.

## **G. PROCUREMENT LIBRARY**

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

RFP, Questions & Answers, RFP Amendments, etc.  
<https://newmexicohsd.bonfirehub.com/portal/>

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	Agency	October 7, 2024
2. Acknowledgement of Receipt Form	Potential Offerors	October 15, 2024
3. Deadline to submit Written Questions	Potential Offerors	October 22, 2024
4. Response to Written Questions	Procurement Manager	October 30, 2024
<b>5. <i>Submission of Proposal</i></b>	<b><i>Potential Offerors</i></b>	<b><i>November 13, 2024</i></b>
6.* Proposal Evaluation	Evaluation Committee	November 18 to November 28, 2024
7.* Selection of Finalists	Evaluation Committee	December 4, 2024
8.* Oral Presentation(s)	Finalist Offerors	December 18, 2024 (If needed))
9.* Best and Final Offers	Finalist Offerors	December 25, 2024
10.* Finalize Contractual Agreements	Agency/Finalist Offerors	Upon DFA approval
11.* Contract Awards	Agency/ Finalist Offerors	Upon DFA approval
12.* Protest Deadline	Agency	15 days following contract award

\*Dates indicated in Events 6 through 12 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

### B. EXPLANATION OF EVENTS

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

#### 1. Issue RFP

This RFP is being issued on behalf of the State of New Mexico Health Care Authority on the date indicated in Section II.A., Sequence of Events.

[New Mexico Healthcare Authority \(bonfirehub.com\)](https://bonfirehub.com)

[Open RFPs New Mexico Health Care Authority \(state.nm.us\)](https://state.nm.us)

## 2. Acknowledgement of Receipt Form

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the HCA buyer, Arnold.Sanchez@hca.nm.gov, to have their organization placed on the procurement Distribution List. The form must be returned to the procurement manager October 15, 2024 by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events.

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

## 3. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until October 22, 2024 MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

## 4. Response to Written Questions

Written responses to the written questions will be provided via e-mail, or the bonfire portal on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A). The Questions and Answers will be posted to:

[New Mexico Healthcare Authority \(bonfirehub.com\)](https://bonfirehub.com)  
[Open RFPs New Mexico Health Care Authority \(state.nm.us\)](https://state.nm.us)

## 5. Submission of Proposal

Only **electronic** proposal submission is allowed. **Do not** submit hard copies until further notice.

ALL PROPOSALS MUST BE SUBMITTED TO THE NMHCA BONFIRE PROCUREMENT PORTAL NO LATER THAN 5:00 PM MDT ON November 13, 2024. **NO LATE PROPOSAL CAN BE ACCEPTED.** No hard copy proposals will be accepted. All proposals must be submitted via the NMHCA Bonfire Procurement Portal.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the Bonfire system by the deadline set forth in this RFP. The Bonfire system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your*

***submission by the deadline.*** A submission that is not both: (1) fully complete; and (2) received, via the Bonfire system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the Bonfire system 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.**

**Proposals must be submitted electronically through Bonfire electronic procurement system. Refer to Section III.B.1 for instructions.** Proposals submitted by facsimile, or other electronic means other than through the Bonfire electronic e-procurement system, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

## **6. Proposal Evaluation**

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

## **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 as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time. Finalists will be comprised of Offerors receiving the highest cumulative scores in the following Sections: Section IV.B.1 Organizational Experience, and Section IV.B.3 Organizational References.

## **8. Oral Presentations**

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

## **9. Finalize Contractual Agreements**

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

## **10. Contract Awards**

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

## **11. Protest Deadline**

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

Protest Manager: Office of General Counsel  
Address: 1474 Rodeo Rd  
Santa Fe, NM 87505

**PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.**

## **C. GENERAL REQUIREMENTS**

### **1. Acceptance of Conditions Governing the Procurement**

Offerors must indicate their acceptance to be bound by the Conditions Governing the Procurement, Section II.C, and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

## **2. Incurring Cost**

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

## **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a State Agency which may derive from this RFP. The State Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.

## **4. Subcontractors/Consent**

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

## **5. Amended Proposals**

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

## **6. Offeror's Rights to Withdraw Proposal**

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

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

## **7. Proposal Offer Firm**

Responses to this RFP, including proposal prices for services, will be considered firm for three hundred sixty-five (365) days after the due date for receipt of proposals or three hundred thirty-five (335) 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 contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

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

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

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

## 9. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

## 10. Termination

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

## 11. Sufficient Appropriation

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

## 12. Legal Review

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

## 13. Governing Law

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

## 14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

## 15. Contract Terms and Conditions

The contract between 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 C). However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP Draft Contract (APPENDIX C) 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 (APPENDIX C). 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 Agency. See Section II.C.15 for requirements.

#### **17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

#### **18. Offeror Qualifications**

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

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

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.19. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that **all** of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

#### **20. Change in Contractor Representatives**

The Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

#### **21. Notice of Penalties**

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

## **22. Agency Rights**

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

## **23. Right to Publish**

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

## **24. Ownership of Proposals**

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

## **25. Confidentiality**

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

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

## **26. Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to:

<https://newmexicohsd.bonfirehub.com/portal/?tab=openOpportunities>

## **28. New Mexico Employees Health Coverage**

A. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the

expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

- B. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <https://bewellnm.com>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

## 29. Campaign Contribution Disclosure Form

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

## 30. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX E, which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differs from the individual identified in A*);
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award;
4. Identify any other entity/-ies (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and
5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's

acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

**Failure to submit the signed Letter of Transmittal Form located in Appendix E will result in Offeror's disqualification.**

**31. Disclosure Regarding Responsibility**

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
  2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
    - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
    - b. violation of Federal or state antitrust statutes related to the submission of offers; or
    - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
  3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
  4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
    - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
    - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
    - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.

- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is the normally possessed by a prudent person in the ordinary course of business dealings.
- F. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

### **32. New Mexico/Native American Resident Preferences**

**In accordance with §13-1-21(J) NMSA 1978, the New Mexico/Native American Resident Preferences shall not apply because the expenditures for this RFP includes federal funds.**

### III. RESPONSE FORMAT AND ORGANIZATION

#### A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP.

#### B. ELECTRONIC SUBMISSION

##### ONLY ELECTRONIC SUBMISSION VIA BONFIRE IS PERMITTED

(<https://newmexicohsd.bonfirehub.com/portal/?tab=openOpportunities>)

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

##### 1. Electronic Submission Requirements

- a. **Register in Bonfire well in advance of the submission deadline** - In order to submit a response to this RFP, Offeror must be fully registered in Bonfire. ***It is the Offeror's responsibility to ensure the registration process is completed in enough time to upload its proposal documents by the deadline set forth in this RFP.*** The registration page may be accessed via the following link:  
<https://newmexicohsd.bonfirehub.com/portal/?tab=openOpportunities>
- b. **Follow all submission instructions** - Proposals must be submitted in the manner outlined in Sections III.B.2 and III.B.3, and organized in accordance with Section III.C. Technical and Cost portions of Offerors proposal must be submitted as **separate uploads**, and must be prominently identified as "Technical Proposal," or "Cost Proposal," on the front page of each upload.
- c. **Complete proposal upload prior to submission deadline** - ***It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the Bonfire system by the deadline set forth in this RFP.*** *The Bonfire system will automatically cease uploading data at the date and time of the deadline. 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 the Bonfire system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the Bonfire system 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 OFFER CAN BE ACCEPTED.***
- d. **Upload a single Technical file and a single Cost file, unless a document exceeds 100MB** - The Offeror need only submit one single electronic copy of each portion of its proposal (one Technical and one Cost), as outlined in Sections III.B.2 and III.B.3.

*EXCEPTION: Single electronic files that exceed 100MB may be submitted as multiple uploads, which must be **the least number of uploads necessary to fall under the 100MB limit.***

- e. **DO NOT upload .zip files** - In accordance with the State of New Mexico’s Information Technology (IT) policies and procedures, we are unable to accept .zip files. See Section II.B.1.d, above, requirements for uploading large files.
  - f. **DO NOT password-protect proposal documents** – The Bonfire system is secure, and accessible only to NMHCA personnel, through a password-protected login. Confidential information must adhere to the requirements of Section II.C.8 and must be submitted pursuant to Section II.B.2.a.
  - g. **Bonfire Technical Support**
    - i. For technical support issues go to Support@GoBonfire.com or visit their help desk forum at <https://vendorsupport.gobonfire.com/hc/en-us>
2. **Technical Proposal** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal must be combined into a single file/document for uploading. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 100MB limit. **The Technical Proposal SHALL NOT contain any Cost information.***
- a. **Confidential Information**: If Offeror’s proposal contains confidential information, as defined in Section I.F.5 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files** :
    - i. One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.2, above, as an **unredacted** (def. Section I.F.38) version for evaluation purposes; **and**
    - ii. One (1) **redacted** (def. Section I.F.26) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror’s proposal. Redacted versions **must** be clearly marked as “REDACTED” or “CONFIDENTIAL” on the first page of the electronic file;
3. **Cost Proposal** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal must be combined into a single file/document for uploading. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 100MB limit*

## C. PROPOSAL CONTENT AND ORGANIZATION

All proposals must be submitted as follows:

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. Within each section of the proposal, Offerors must organize and address the RFP requirements in the order indicated below. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of Offeror's proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

### **Technical Proposal – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Disclosure Form
3. Table of Contents
4. Proposal Summary (Optional)
5. Response to Contract Terms and Conditions (from Section II.C.15)
6. Offeror's Additional Terms and Conditions (from Section II.C.16)
7. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
  - a. Organizational Experience
  - b. Organizational References
  - c. Financial Stability –(Financial information considered confidential, as defined in Section I.F. and detailed in Section II.C.8, should be placed in the **Confidential Information** file, per Section III.B.2.a, as applicable)
8. Other Supporting Material (if applicable)

### **Cost Proposal:**

1. Completed Cost Response Form (APPENDIX D)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

## **IV. SPECIFICATIONS**

### **DETAILED SCOPE OF WORK**

The Developmental Disabilities Supports Division of the Health Care Authority is seeking a professional organization that specializes in economics, statistics, and actuaries with experience in health care financing and financial modeling specific to Home and Community Based Services (HCHS) waiver programs.

Offeror shall conduct an independent rate study including rate analysis and rate setting; and research and business analysis to recommend reimbursement rates for the provision of services for individuals with intellectual and developmental disabilities receiving services through all four Home and Community Based Services Waivers; the Developmental Disabilities Waiver (DDW), Mi Via Waiver (MV), Medically Fragile Waiver (MF) and the Supports Waiver (SW.) The rate study will be conducted in accordance with CMS guiding rules for rate setting methodology for 1915 c waivers.

#### **A. RATE STUDY (Attached Fee Schedules per waiver SEE APPENDIX G)**

##### **1. Developmental Disabilities Waiver**

The rate study will include all services and rates approved by CMS in the current DDW. There are approximately 59 service codes and billable units of service include 15 minutes, each, month, hour, day, per mile, and item.

##### **2. Mi Via Waiver**

The rate study will include all services and rates approved by CMS in the current MV Waiver. There are approximately 58 service codes and billable units of service include 15 minutes, each, month, hour, day, and item.

##### **3. Medically Fragile Waiver**

The rate study will include all services and rates approved by CMS in the current MF Waiver. There are approximately 25 service codes and billable units of service include 15 minutes, each, month, hour, day, and item.

##### **4. Supports Waiver: Agency Based Model and Participant Directed Model**

The rate study will include all services and rates approved by CMS in the current SW Waiver. There are approximately 30 combined service codes between the two models and billable units of service include 15 minutes, each, month, hour, day, and item.

The Contractor will:

1. Provide a road map and guidance on how to incorporate value-based rates and make recommendations for the state for which rates should be incentivized, according to DDSD priorities. Provide guidance on reimbursement strategies for:
  - a. Incentivizing performance/outcomes as part of the rate structure in accordance with CMS guidelines; and
  - b. Uptake of underutilized services.

2. Review the utility of incentive and standard rates – should these distinctions continue or discontinue? If they continue, develop an implementation plan to include all four HCBS waivers.
3. Determine and explain decision related to the use of subcontractors versus use of employees in the rate study.
4. Divide Supported Living Category 4 into 2 rates, one for behavioral needs and one for medical needs, with corresponding modifiers for DDW.
5. Propose unique rates for telehealth work versus face-to-face service delivery rates.
6. Include proposed Individual Budget Allotment (IBA) limitation increases for all rate increases for the Mi Via Waiver and Supports Waiver.
7. Update fee schedules for recommended rates.
8. Be available and respond in writing to public comment/questions related to the study's findings and recommendations.
9. Research best practices, conduct reviews of literature, and other sources, gather information from providers, and summarize best practice results in a report to DDS. Areas of research include, but are not limited to the following:
  - a. Service definitions
  - b. Levels of need for each service
  - c. Units of services
  - d. Rate setting employed in other states
  - e. Geographic adjustments for cost of living
  - f. Costs that are not allowed
  - g. Waiver management to utilize existing resources more efficiently.
10. Develop a method to assess the quality of services provided and the impact, if any, of rates paid and/or costs to the provider.
11. Based on professional and industry standards, propose a detailed methodology approved by CMS to collect data from DD, SW, and MF waiver providers and Mi Via and SW Vendors regarding provider costs including current rates received for delivering HCBS waiver services. Types of data include, but are not limited to direct support personnel staff wages, benefits, productivity, program support, agency administration, program support costs and other costs.
12. Propose a Rate Study methodology that includes, but is not limited to the collection of data on:
  - a. The market salaries of each discipline based on national and state data;
  - b. Employee related costs, including but not limited to taxes; worker's compensation;
  - c. Determine recent and projected changes in costs due to factors that include inflation, changes in the applicable minimum wage, and any newly effective requirements for employers during the period covered by the rate study and build into rate recommendations.
  - d. Consider and factor into recommended rates the additional costs that would be incurred by direct support professional's (DSP) provider/vendor agencies if all DSPs were paid at least 150% of the state minimum wage.
  - e. Include paid family medical leave costs (.4% payroll from providers) into recommended rates.

- f. Evaluate the Department of Labor Overtime Exemption Proposed Rule: Notice of Proposed Rulemaking: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees and provide recommendations and amounts for how to incorporate this into existing rates annually, specifically salaried employees and providers.
  - g. Health care benefits; training; travel/mileage; vacation; holidays; and sick leave;
  - h. Administrative staff costs, including but not limited to: data entry; billing; quality assurance; and supervision;
  - i. Productivity;
  - j. Other Administration/indirect costs, including but not limited to: facility; supplies; equipment; translation and interpretation;
  - k. Percent of billable/productive time utilizing a time study;
  - l. Comparable cost and rates established by other states to validate findings and recommendations;
  - m. Acuity and level of care;
  - n. Results of the information gathered from the DD, SW, MF providers and Mi Via and SW vendors.
  - o. Cost related to the implementation of the CMS Ensuring Access to Medicaid Services Final Rule;
  - p. Cost related to complying with the DOL Home Care Rule;
  - q. Cost related to utilizing the EVV system.
13. Summarize and aggregate all data gathered, prepare, and present the report to HCA/DDSD.
14. Propose a work plan and timelines for completion of the Rate Study. The work plan will include, but not limited to: a) all project activities; b) milestones; c) timelines; d) deliverables; and e) resources assigned to each rate study activity.
15. Obtain approval of the work plan by HCA/DDSD.
16. Submit deliverables as specified in the approved work plan and report on the status of activities completed.

#### **A. Proposed Rate Models**

- 1. Develop and propose draft rate models for each waiver program and service categories identified by the HCA/DDSD.
- 2. The draft rate models shall be based on data collected from the providers and other data sources agreed to by the HCA/DDSD.
- 3.
- 4. The rate models shall detail specific assumptions related to the actual cost of delivering each service included, but not limited to:
  - a. direct support personnel wages;
  - b. benefits;
  - c. productivity;
  - d. billable hours;
  - e. staffing ratios;
  - f. staff cost per billable hours;

- g. capital costs;
  - h. operating costs;
  - i. administrative and program support costs;
  - j. transportation;
  - k. other relevant factors;
  - l. cost related to the implementation of the CMS Ensuring Access to Medicaid Services Final Rule
  - m. cost related to complying with the DOH Home Care Rule; and
  - n. cost related to utilizing an EVV system.
5. The rate models shall incentivize priority services determined by DOH/DDSD.
  6. Provide documentation that supports the rate models and key assumptions used to establish the proposed rates.
  7. Develop a fiscal impact analysis report identifying:
    - a. The financial impact associated with the adoption of a new rate and payment structure by service area and waiver program.
    - b. Potential budgetary changes required to support proposed rate structure.
    - c. The report should also identify the impact on current provider types of proposed rates increase or decrease.
  8. Revise rate methodology and update rate models based on feedback from HCA/DDSD, HCA/MAD, Rate Setting Workgroup and Advisory Council on Quality Supports for Individuals with Developmental Disabilities and Their Families (ACQ).
  9. Apply modifications to final rate models and revise supporting documentation to reflect the changes.
  10. Recommend revisions to service definitions and standards based on outcome of the rate study.
  11. Present results to DDSD and HCA/MAD senior management, Rate Setting Committee, and the ACQ.
  12. Revise Fee Schedules and Individual Budget Allotments to reflect recommended rates.

**B. Stakeholder Engagement**

1. The Offeror will be required to facilitate meetings with the Rate Study Workgroup and ACQ to identify the best strategies to include, but not be limited to: collection of information from the DD waiver providers, MF waiver providers, SW providers Mi Via vendors; cost reporting; and Rate Study requirements.

2. Provide the information gathered from the DD, MF and SW waiver providers and Mi Via and SW vendors, draft rate models with supporting documentation, and fiscal impact report to the Rate Study Committee.
3. Participate and support HCA/MAD to obtain public comment on the rate model, including but not limited to: presenting on the rate methodology; draft rates; and drafting responses to public comments as request by HCA/DDSD.
4. Gather, summarize, and respond to all comments received from HCA/DDSD review and approval.

### **C. Project Manager**

The offeror must designate a Project Manager to represent and oversee the project. This individual will serve as the main point of contact for all business matters relating to the project. The Offer shall provide a resume, a list of qualifications, years of experience as a project manager, and current work assignments (other clients) to include a home office location.

The Project Manager will:

1. Be the single point of contact for the duration of the contract;
2. Develop, modify, and finalize a work plan for approval by HCA/DDSD which shall include, but not be limited to: a) all project activities; b) milestones; c) timelines; d) deliverables; and e) resources assigned to each Rate Study activity;
3. Be responsible for meeting all contractual requirements for the duration of the project;
4. Be responsible for timely completion of all phases of the project;
5. Remain assigned to the project through completion of the project as determined by the HCA/DDSD;
6. Attend all meetings as requested by the HCA/DDSD;
7. Meet with DDSD staff monthly or mor frequently as determined by HCA/DDSD to discuss implementation and status of contact;
8. Provide a detailed monthly invoice summarizing contract activities and expenditures, as well as activities planned for future months; and
9. Be fully prepared to begin implementation of contract within (5) days from the date it is executed.

## **A. TECHNICAL SPECIFICATIONS**

1. **Organizational Experience:** Only proposals demonstrating the following minimum qualifications will be evaluated for consideration for the award of this contract:
  - a) The Offeror and key personnel must describe the experience they possess in conducting and completing rate setting activities for statewide Medicaid funded HCBS for intellectual and

developmental disabilities systems that resulted in rates that were accepted and implemented within the past five years.

b) The Offeror must provide a description of relevant corporate experience with the state government and the 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 to include the extent of their experience, and expertise and knowledge as a provider of a HCBS Waiver Rate Study as follows:

1. List the Offeror's mission and values and describe how they are suited to services/projects proposed;
2. Provide a summary of the Offeror's experience with services/projects like those proposed;
3. Describe the Offeror's success and challenges in working with services/projects like those proposed, and how the experience was used for quality improvement;
4. Describe previous monitoring results and/or performance measure results;
5. Provide the name, title, qualifications, educational level and work experience of key personnel who will work on the project being proposed;
6. Provide an organizational chart of the proposed structure that demonstrates how the proposed service/project will fit into the agency structure;
7. Describe the management structure of the organization, including chain of supervision;
8. Provide a statement regarding the use of subcontracts for each service/project proposed and the percentage of work estimated to be subcontracted;
9. Describe the structure of policies and procedures of the offeror and how personnel, including any subcontractor, are trained on these;
10. Describe the structure of training and other personnel development for personnel, including subcontractors (if applicable); and
11. Provide a statement regarding how the Offeror maintains the confidentiality of information and records of individuals served.

## 2. Organizational References

Offerors should provide a minimum of three (3) references from similar projects performed for private, state, or large local government clients within the last three years. **Offerors are required to submit APPENDIX F, Organization Reference Questionnaire, to the business references they list. The business references must submit the Reference Form directly to the designee described in Sec I Paragraph D.** It is the Offeror's responsibility to ensure the completed forms are received as indicated in the II. A sequence of events for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the vendor's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on the conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the

right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II, Para C. 18.

Offerors shall submit the following Business Reference information as part of the Offer:

- a) Client name.
- b) Project description.
- c) Project dates (starting and ending).
- d) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff assigned to reference engagement that will be designated for work per this RFP: and
- f) Client project manager’s name, telephone number, fax number and e-mail address.

**3. Oral Presentation**

If selected as a finalist, Offeror agrees to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Agency. The Evaluation Committee may request finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

**4. Mandatory Specification**

Refer to the Detailed Scop of Work

**A. Product Implementation**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
Rate Study	XXX	

Task Item	Sub Tasks	Description
<b>Planning</b>		

<b>Monthly Reporting</b>		Provide Monthly reports on the project status
<b>Activities Tracking</b>		Facilitate Weekly meetings and provide detailed status reports

## **B. BUSINESS SPECIFICATIONS**

### **1. Financial Stability**

Offerors must submit copies of the most recent years independently audited financial statements and the most current 10K, as well as financial statements for the preceding three years, if they exist. The submission must include the audit opinion, the balance sheet, and statements of income, retained earnings, cash flows, and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g. D & B report).

### **2. Letter of Transmittal Form**

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror's disqualification.**

### **3. Campaign Contribution Disclosure Form**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by fees based on full days. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

#### **4. Cost**

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by fees based on full days. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

## V. EVALUATION

### A. EVALUATION POINT SUMMARY

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

<b>Evaluation Factors</b> <i>(Correspond to Sections IV.B and IV.C)</i>	<b>Points Available</b>
<b>B. Technical Specifications (## Total Points)</b>	<b>700</b>
B. 1. Organizational Experience	500
B. 2. Organizational References	200
<b>C. Business Specifications (## Total Points)</b>	<b>300</b>
C.1. Financial Stability	Pass/Fail
C.2. Letter Of Transmittal	Pass/Fail
C.3. Campaign Contribution Disclosure Form	Pass/Fail
C.4. Cost	300
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>

Table 1: Evaluation Point Summary

### B. EVALUATION FACTORS

#### 1. B.1 Organizational Experience (See Evaluation Factors Table 1)

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

#### 2. B.2 Organizational References (See Evaluation Factors Table 1)

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

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

**3. C.1 Financial Stability (See Table 1) Offer must have a valid email address to send or receive correspondence**

Pass/Fail only. No points assigned.

**4. C.2 Letter of Transmittal (See Table 1)**

Pass/Fail only. No points assigned.

**5. C.3 Campaign Contribution Disclosure Form (See Table 1)**

Pass/Fail only. No points assigned.

**6. C.4 Cost (See Table 1)**

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

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

**C. EVALUATION PROCESS**

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

## **APPENDIX A**

### **ACKNOWLEDGEMENT OF RECEIPT FORM**

# APPENDIX A

## REQUEST FOR PROPOSAL

### Home and Community Based Services Rate Study

RFP# 25-630-0700-0004

#### ACKNOWLEDGEMENT OF RECEIPT FORM

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

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

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

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

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

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

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

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

**Submit Acknowledgement of Receipt Form to:**

To: Arnold Sanchez

E-mail: Arnold.Sanchez@hca.nm.gov

Subject Line: Home and Community Based Services Rate Study and RFP# 25-630-0700-0004

## APPENDIX B

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

**Name(s) of Applicable Public Official(s) if any:** \_\_\_\_\_

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

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

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

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

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

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

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

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (position)

**--OR--**

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

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title (Position)

## **APPENDIX C**

### **DRAFT CONTRACT**

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

STATE OF NEW MEXICO  
HEALTH CARE AUTHORITY  
PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Health Care Authority**, hereinafter referred to as the “**HCA**,” and **Contractor**, hereinafter referred to as the “Contractor”, and is effective as of the date set forth below upon which it is executed by the State Purchasing Division (SPD) Contract Review Bureau (CRB).

**IT IS AGREED BETWEEN THE PARTIES:**

**1. Scope of Work.**

The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached to this Agreement and incorporated herein by reference.

**2. Compensation.**

A. The HCA shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT), excluding gross receipts tax. The total amount payable to the Contractor under this Agreement, including gross receipts tax, if applicable, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the HCA when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the SPD. All invoices MUST BE received by the HCA no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

**(—OR— CHOICE – MULTI-YEAR)**

A. The HCA shall pay to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) in FYXX (USE FISCAL YEAR NUMBER TO DESCRIBE YEAR; DO NOT USE FY1, FY2, ETC.). The New Mexico gross receipts tax levied on the amounts payable under this Agreement in FYXX totaling (AMOUNT) shall be paid by the HCA to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT) in FYXX.**

(REPEAT LANGUAGE FOR EACH FISCAL YEAR COVERED BY THE AGREEMENT -- USE FISCAL YEAR NUMBER TO DESCRIBE EACH YEAR; DO NOT USE FY1, FY2, ETC.).

B. Payment in FYXX, FYXX, FYXX, and FYXX is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the DFA. All invoices MUST BE received by the HCA no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HCA finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HCA that the services have been received and accepted, payment shall be tendered to the Contractor within thirty 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 HCA shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE State Purchasing Department (SPD)/Contracts Review Bureau (CRB). This Agreement shall terminate on (Date), unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination.**

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

B. **Notice; HCA Opportunity to Cure.**

1. Except as otherwise provided in Paragraph (4)(B)(3), the HCA shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

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

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services

contracted for, as determined by the HCA; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

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

D. Termination Management. Immediately upon receipt by either the HCA or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the HCA; 2) comply with all directives issued by the HCA in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the HCA shall direct for the protection, preservation, retention or transfer of all property titled to the HCA and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the HCA upon termination and shall be submitted to the HCA as soon as practicable.

**5. Appropriations.**

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

**6. Status of Contractor.**

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

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

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

**10. Confidentiality.**

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

**11. Product of Service - Copyright.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the HCA no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

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

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

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

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

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the

State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

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

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

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

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

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HCA relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the HCA if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 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 HCA and notwithstanding anything in the Agreement to the contrary, the HCA may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

**13. Amendment.**

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

B. If the HCA proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

**14. Merger.**

This Agreement, including any and all attachments, exhibits and/or appendices, 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.

**15. Penalties for Violation of Law.**

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Workers Compensation.**

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

**19. Records and Financial Audit.**

A. The Contractor shall maintain detailed records that indicate the nature and price of Services rendered during this Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement.

B. Contract for an independent audit in accordance with 2 CFR 200 at the Contractor's expense, as applicable or upon HCA request, submit its most recent 2 CFR 200 audit. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the

auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HCA. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by 2 CFR 200 or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be available to the HCA and any other authorized entity as required by law within (fifteen) 15 days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HCA for good cause and the HCA reserves the right to approve or reject any such request. The HCA retains the right to contract for an independent financial and functional audit for funds and operations under this Agreement if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HCA when the audit is available for review and provide online access to the HCA, or the Contractor shall provide the HCA with four (4) originals of the audit report. The HCA will retain two (2) and one (1) will be sent to the HCA/Office of the Inspector General and one (1) to the HCA/Administrative Services Division/Compliance Bureau.

D. Within thirty (30) days thereafter or as otherwise determined by the HCA in writing, the Contractor shall provide the HCA with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HCA has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain the Schedule of Expenditures of Federal Awards for each program to facilitate ease of reconciliation by the HCA. This audit shall also include a review of the schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to 2 CFR 200, specifically subpart F, and appendices where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with 2 CFR 200, specifically subpart F and appendices.

## **20. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the HCA and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, 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 the legal counsel of the HCA and the Risk Management Division of the New Mexico General Services Department by certified mail.

**21. New Mexico Employees Health Coverage.**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to 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 Contractor and the State exceed \$250,000 dollars.

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

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

**22. Invalid Term or Condition.**

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

**23. Enforcement of Agreement.**

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

**24. 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 HCA: [name, address, email]

Developmental Disabilities Supports Division  
1190 St. Francis Drive,  
Santa Fe, NM 87505

To the Contractor:

[name, address, email]

**25. Debarment and Suspension.**

A. Consistent with all applicable federal and/or state laws and regulations, as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a 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 relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HCA relied when this Agreement was entered into by the parties. The Contractor's certification in Paragraph A, above, shall be a continuing term or condition of this Agreement. As such at all times during the performance of this Agreement, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this Agreement for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

- 1) The Contractor shall provide immediate written notice to the HCA's Program Manager if, at any time during the term of this Agreement, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances.
- 2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HCA, the HCA may terminate the Agreement.

C. As required by statute, regulation or requirement of this Agreement, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such

disclosures available to the HCA when it requests subcontractor approval from the HCA. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HCA may refuse to approve the use of the subcontractor.

**26. Certification and Disclosure Regarding Payments To Influence Certain Federal Transactions (Anti-Lobbying).**

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

- 1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and
- 2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

C. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this Agreement. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HCA, termination of the Agreement.

**27. Non-Discrimination.**

A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this Agreement under any program or activity.

D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency."

**28. Drug Free Workplace.**

A. *Definitions.* As used in this paragraph—  
"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.  
"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.  
"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.  
"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.  
"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.  
"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the

Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- 2) Establish an ongoing drug-free awareness program to inform such employees about:
  - a) The dangers of drug abuse in the workplace;
  - b) The Contractor's policy of maintaining a drug-free workplace;
  - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3) Provide all employees engaged in performance of the PSC with a copy of the required by subparagraph B(1);

4) Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this PSC, the employee will:

- a) Abide by the terms of the statement; and
- b) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

5) Notify the HCA Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6) Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- a) Taking appropriate personnel action against such employee, up to and including termination; or
- b) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

7) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this Section.

C. The Contractor, if an individual, agrees by entering into this PSC not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

D. In addition to other remedies available to the HCA, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default

of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

**29. Findings and Sanctions.**

A. The Contractor agrees to be subject to the findings, sanctions and disallowances assessed or required as a result of audits pursuant to this agreement.

B. The Contractor will make repayment of any funds expended by the HCA, subject to which an auditor acting pursuant to this agreement finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HCA becomes aware of circumstances that might jeopardize continued federal funding the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HCA officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

**30. Authority.**

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

**The remainder of this page intentionally left blank.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of signature by the SPD/CRB below:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
HCA Cabinet Secretary

By: \_\_\_\_\_ Date: \_\_\_\_\_  
HCA Chief Financial Officer

Approved for legal sufficiency:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
HCA General Counsel

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

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

BTIN: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tax and Revenue Department Representative

This Agreement has been approved by the SPD Contracts Review Bureau:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
SPD Contracts Review Bureau

## APPENDIX D

### COST RESPONSE FORM

**(Buyers note: Ensure statutory requirements of NMSA 1978, § 13-1-150 regarding Multi Term Contracts limits are complied with when establishing Pricing/Term periods or extension pricing)**

Technical Specifications based on Detailed Scope of Work	Monthly Cost (unless otherwise indicated below)
a) Develop and implement a rate study methodology that includes, but is not limited to the collection of data	
b) Research best practices, gather information and summarize findings in a report to the Department.	
c) Conduct a rate analysis of the provision and cost of selected service	
d) Develop proposed rates for traditional DDW services, Medically Fragile Waiver services and two Mi Via Waiver services.	
e) Develop fiscal impact report based on the proposed rates.	
f) Develop methodology to address increased costs/inflation costs in providing services in subsequent years after the rate study.	
g) Stakeholder engagement to include regular meetings with Department staff, HCA, and other stakeholder regarding the design and implementation of the rate study	
h) Provider Capacity Assessment	

All monthly costs must be firm, fixed and include all services performed under the requirements of the Section IV. D, Detailed Scope of Work. Additional costs and/or fees that are not included in the Monthly Cost will not be permitted under this contract.

Monthly Costs: \$ \_\_\_\_\_ X 12 months=Annual Costs \$ \_\_\_\_\_ X 4 years=  
\$ \_\_\_\_\_

**APPENDIX E**

**LETTER OF TRANSMITTAL FORM**

## ***APPENDIX E***

### ***Letter of Transmittal Form***

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

**RFP#: 25-660-0700-0004**

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

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED TIN#</b>	
<b>NM BTIN#</b>	

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

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

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

**3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):**

\_\_\_\_\_ No.  
 \_\_\_\_\_ Yes. Identify subcontractor/s: \_\_\_\_\_

**4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)**

\_\_\_\_\_ No.  
 \_\_\_\_\_ Yes. Identify entity/-ies: \_\_\_\_\_

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

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

Sign: \_\_\_\_\_ Date: \_\_\_\_\_

*(Must be signed by the individual identified in item #2.A, above.)*

## **APPENDIX F**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

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

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: **Arnold Sanchez, at Arnold.Sanchez@hca.nm.gov** by October 25th, 2024 for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

**RFP # 25-630-0700-0004**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_

(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the State of New Mexico, Health Care Authority via e-mail to:

Name: Arnold Sanchez  
 Email: [Arnold.Sanchez@hca.nm.gov](mailto:Arnold.Sanchez@hca.nm.gov)

Forms must be submitted no later than October 25th, 2024, and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide thorough comments in response to the questions asked. The comments you provide will help the State of New Mexico evaluate the above-referenced Offeror’s service history, successful execution of services, and evidence of customer/client satisfaction.

**For questions or concerns regarding this form**, please contact the State of New Mexico **Procurement Manager** at 505-629-8358, email: [Arnold.Sanchez@hca.nm.gov](mailto:Arnold.Sanchez@hca.nm.gov). When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>Project/Service description</b>	
<b>Project/Service dates (start and end dates)</b>	
<b>Technical environment for the project your providing a reference (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);</b>	

QUESTIONS:

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

COMMENTS:

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

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

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the 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, N/A = Not applicable)

COMMENTS:

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

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

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your project and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

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

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

Name: \_\_\_\_\_ Rating: \_\_\_\_\_

COMMENTS:

7. How satisfied are/were you with the products developed by the vendor?

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

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

COMMENTS:

**APPENDIX G**  
**RATE SCHEDULES PER WAIVER**

