

**Human Services Department
Medical Assistance Division**

REQUEST FOR PROPOSALS (RFP)

**Facility Rates, Audits, Payments, CMS Compliance &
Reporting**



**RFP#
21-630-8000-0002**

RFP Release Date: February 22, 2021

Proposal Due Date: March 19, 2021

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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 an experienced auditor and consultant with experience in the health care industry to conduct a multitude of various types of audits, cost reports, payments, rate settings, reconciliations, supplemental payment calculations, consultations, and assistance in evaluating new reimbursement methodologies. Also, to make recommendations related to rules and policies, that improve the delivery of services and yield more robust programs, and proactively identify opportunities to align and maximize project resources. The auditor must maintain accurate bookkeeping of cost settlements, compliance with all federal and state laws and rules, careful administration, and reviews of the Disproportionate Share Hospital, SNCP projects, and Health Care Quality Surcharge (HCQS). The audit agent will perform audits and rate settings for providers participating in the New Mexico Medicaid Program, including but not limited to, Home Health Agencies, Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs), Long Term Care Facilities (LTCs), Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs), Crisis Triage Centers (CTC), Adult Accredited Rehabilitation Centers (AARTCs). The audits will include desk and field audits and complete reports of the audits submitted to the Department on a timely basis. The auditor will also perform financial audits of Managed Care Organizations (MCOs) that participate in the New Mexico Medicaid Program.

B. BACKGROUND INFORMATION

This section provides background on the HSD/MAD that may be helpful to Offerors in preparing a proposal. The information is provided as an overview and is not intended to be a complete and exhaustive description.

1. HSD Goals:
 - Improve the value and range of services we provide to ensure that every qualified New Mexican receives timely and accurate benefits.
 - Create effective, transparent communication to enhance the public trust.
 - Successfully implement technology to give customers and staff the best and most convenient access to services and information.
 - Promote an environment of mutual respect, trust, and open communication for staff to grow and reach our professional goals.
2. HSD Mission:

To transform lives. Working with our partners, we design and deliver innovative, high quality health and human services that improve the security and promote independence for New Mexicans in their communities.

3. The Human Services Department (HSD) serves over 800,000 New Mexicans by administering several large state and federally funded programs. Striving to break the cycle of dependency on public assistance, HSD provides many programs and resources to those in need.
4. Organization of HSD: HSD is a cabinet-level agency in the Executive Branch of New Mexico State Government, headed by a Cabinet Secretary who is appointed by the Governor and confirmed by the New Mexico Senate. HSD consists of the Office of the Secretary and four program Divisions: Medical Assistance Division (MAD), Income Support Division (ISD), Child Support Enforcement Division (CSED), and Behavioral Health Services Division (BHSD).

The Human Services Department is also a key member of the NM Behavioral Health Collaborative and works across state agencies to collaborate on behavioral health issues.

The current contracts were awarded for a four (4) year duration. These four (4) year contracts are due to expire June 30, 2021.

C. SCOPE OF PROCUREMENT

The scope of procurement is to secure an agreement with an independent audit agent of the state of New Mexico who has the ability and resources to, and will, conduct a multitude of various types of audits, cost reports, payments, rate settings, reconciliations, supplemental payment calculations, consultations, and assistance in evaluating new reimbursement methodologies, in accordance with state and federal laws and regulations, as well as generally accepted auditing and accounting principles as defined Scope of Work detained in the Sample Professional Services Contract (Appendix C) of this RFP. The contract is scheduled to begin on July 1, 2021 or upon receiving all required state approvals whichever is later, and end on July 31, 2025. Under no circumstance shall the contract exceed a total of four (4) years in duration.

The resulting may be a single/multiple award. Award will be based per scope of work.

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

Human Services Department/ Medical Assistance Division has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, telephone number and e-mail address are listed below:

Name:	Jolene A. Mondragon, Procurement Manager
Telephone:	(505) 699-5966
Email:	jolenea.mondragon@state.nm.us

1. **Any inquiries or requests** regarding this procurement should 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 HSD.
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 DELIVERY

Submissions of all proposals must be accomplished via the Human Services electronic procurement portal, Bonfire. Refer to Section III.B.1 for instructions.

Name: Jolene A. Mondragon c/o Gary O. Chavez, CPO
Reference RFP Name: Facility Rates, Payments, CMS Compliance & Reporting
RFP #21-630-8000-0002
Address: New Mexico Human Services
Administrative Services Division
1471 Rodeo Rd.
Santa Fe, New Mexico 87505

F. DEFINITION OF TERMINOLOGY

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

1. **“AARTC”** means Adult Accredited Residential Treatment Center. A BHSD program to help an eligible recipient 21 years of age and older, who has been diagnosed as having a substance use disorder (SUD), and the need for ARTC has been identified in the eligible recipient's diagnostic evaluation as meeting criteria of the American Society of Addiction Medicine (ASAM) level of care three for whom a less restrictive setting is not appropriate, MAD pays for services furnished to him or her by an ARTC accredited by the Joint Commission (JC), the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Council On Accreditation (COA).
2. **“Agency”** means the State Agency sponsoring the Procurement action. In this RFP the agency is HSD.
3. **“Audit Agent”** means the selected Contractor.

4. “**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.
5. “**Award**” means the final execution of the contract document.
6. “**BHSD**” means the Behavioral Health Services Division of the Human Services Department.
7. “**Border Area Services**” means services rendered within 100 miles of the New Mexico state border (Mexico excluded). The Medical Assistance Division pays for border area services to the same extent and subject to the same rules and requirements that such services are covered when provided within the state.
8. “**Business Hours**” means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
9. “**Centers for Medicare and Medicaid Services (CMS)**” means the Federal agency of the Department of Health and Human Services responsible for administering Medicare and Medicaid.
10. “**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
11. “**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.
12. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
13. “**Contractor**” means any business having a contract with a state agency or local public body.
14. “**Contract Year**” means the period beginning July 1 of each year and ending June 30.
15. “**CRB**” means Contracts Review Bureau.
16. “**CTC**” means Crisis Triage Centers. Medical Assistance pays for a set of services, either outpatient only or including residential, authorized by 2014 NM HB 212 Crisis Triage Center (CTC) to eligible adults and youth 14 years of age and older, or adults only, to provide

voluntary stabilization of behavioral health crises including emergency mental health evaluation and care.

17. **“Department”** means the Human Services Department of the State of New Mexico.
18. **“Desk Review”** means an in-house analysis of cost report data submitted by the provider. The purpose of the desk review is to arrive at an opinion as to whether the costs appear to be reasonable and allowable for reimbursement under relevant Federal and State regulations.
19. **“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.
20. **“Desirable”** – the terms “may,” “can,” “should,” “preferably,” or “prefers” to identify a desirable or discretionary item or factor.
21. **“DFA”** means the Department of Finance and Administration of the Human Services Department.
22. **“Division”** means the Medical Assistance Division of the Human Services Department.
23. **“Disproportionate Share Hospital (DSH)”** means hospitals that serve a significantly disproportionate number of low-income patients and receive payments from the Centers for Medicaid and Medicare Services to cover the costs of providing care to uninsured patients. **Disproportionate share hospitals** are defined in Section 1886 (d) (1) (B) of the Social Security Act.
24. **“Electronic Submission”** means a successful submittal of Offeror’s proposal in the Bonfire system, in such cases where Bonfire submissions are accepted.
25. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
26. **“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.
27. **“Federally Qualified Health Centers (FQHC)”** means a community-based organization that provides comprehensive primary care and preventive care, including health, oral, and mental health/substance abuse services to persons of all ages, regardless of their ability to pay or health insurance status.
28. **“Field Audit”** means an on-site analysis of cost report data submitted by a provider. This constitutes an in-depth review of the providers’ financial and statistical records to verify data submitted on the cost report is accurate, complete, allowable and reasonable.

29. **“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.
30. **“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.
31. **“HAP”** means Hospital Access Payments. The HAP program replaced the UC program for CY20.
32. **“HCQS”** means Health Care Quality Surcharge-Senate Bill 246. The HCQS program imposes a daily surcharge on Nursing Facilities (NFs) and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs) for non-Medicare bed days. The purpose of the surcharge is to increase Medicaid reimbursement and support quality improvement efforts.
33. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
34. **“HPL”** means High Performance level.
35. **“HQIP”** means Health Quality Incentive Initiative.
36. **“Human Services Department (HSD)”** means the executive department in New Mexico responsible for the administration of Title XIX (Medicaid). The term HSD may also indicate the Department’s designee, as applicable.
37. **“In-State”** means any facility operating within New Mexico.
38. **“IT”** means Information Technology.
39. **“MAD”** means Medical Assistance Division which is the Division at the Human Services Department administering the Medicaid program.
40. **“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.
41. **“Medicaid”** means the Medical Assistance Program, authorized under Section XIX of the Social Security Act, furnished to New Mexico residents who meet specific eligibility requirements.

42. “**MCO**” means managed care organization, which is an entity that participates in Centennial Care under contract with HSD to assist the State in meeting the requirements established under NMSA 1978, § 27-2-12.
43. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
44. “**Medical Loss Ratio (MLR)**” means the Affordable Care Act requires health insurance issuers to submit data on the proportion of premium revenues spent on clinical services and quality improvement.
45. “**MPL**” means minimum performance level.
46. “**MMIS**” means Medicaid Management Information System.
47. “**Multiple Source Award**” means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
48. “**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.
49. “**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.
50. “**Procurement Manager**” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.
51. “**Procurement Manual**” means the State of New Mexico Medical Assistance Division Program Policy Manual.
52. “**Procuring Agency**” means all State of New Mexico agencies, commissions, institutions, political subdivisions, and local public bodies allowed by law to entertain procurements.
53. “**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.
54. “**Provider**” means a Hospital, Home Health Agency, Federally Qualified Health Center, Rural Health Clinic, Adult Accredited Residential Treatment Center, Crisis Triage Center, Long-Term Care, or any other provider certified by the Department to provide Medicaid services to a recipient under the Department’s regulations.

55. **“Recipient”** means a person who received Medicaid services under the Department Regulations.
56. **“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.
57. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
58. **“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.
59. **“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.
60. **“Safety Net Care Pool (SNCP)”** means a qualifying hospital (provider) – an acute care general hospital licensed by the Department of Health that is qualified to receive payments from the safety net care pool pursuant to an agreement with the federal Centers for Medicare and Medicaid Services.
61. **“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Procurement Manager. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Procurement Manager in such cases.
62. **“Secretary”** means the Cabinet Secretary of the New Mexico Human Services Department.
63. **“Services Schedule”** is a complete list, accompanied by the descriptive narrative, grouped by service categories, of services provided by Offerors.
64. **“Settlement”** is a final determination of reimbursable cost and/or the establishment of a prospective per diem rate for a provider.
65. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.

66. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
67. **“State (the State)”** means the State of New Mexico.
68. **“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.
69. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.
70. **“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal. (E.g., “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
71. **“TAP”** means Targeted Access payments. TAPs are made based on a calculation of what the SNCP hospital received in prior year uncompensated care (UC) payments.
72. **“Uncompensated Care (UC)”** means a pool of monies available to eligible Safety Net Care Hospitals to defray to actual uncompensated cost of inpatient and outpatient hospital services provided to Medicaid eligible or uninsured individuals (defined as individuals who have no source of third-party coverage).
73. **“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.
74. **“Value Based Purchasing”** means a broad set of payment strategies that link financial incentives to providers’ performance on a set of defined measures of quality and/or cost or resource use with the goal of achieving better value by driving improvements in quality and slowing the growth in health care spending.
75. **“Written”** means typewritten on standard 8 ½ x 11-inch paper. Larger paper 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 the electronic version of this document through your own internet connection. The library contains information listed below:

Electronic version of RFP, Questions & Answers, RFP Amendments, etc.

<https://newmexicohsd.bonfirehub.com/opportunities/39205v>
[Open RFPs | New Mexico Human Services Department \(state.nm.us\)](#)

Other relevant links:

1. NMAC Program Rules:
<http://www.hsd.state.nm.us/providers/rules-nm-administrative-code-.aspx>.
2. New Mexico's Attachments for the Section 1115 Demonstration Titled "Centennial Care"
http://www.hsd.state.nm.us/uploads/FileLinks/f2f07ac7becd43f3a0fcefae255c1793/NM_1115_STCs_Revised_11.18.14.pdf
3. New Mexico State Plan
<http://www.hsd.state.nm.us/uploads/files/Looking%20For%20Information/General%20Information/State%20Plan%20Amendments/State%20Plan.pdf>
4. New Mexico State Plan Amendments
<http://www.hsd.state.nm.us/uploads/files/Looking%20For%20Information/General%20Information/State%20Plan%20Amendments/State%20Plan%20Attachments.pdf>
5. Safety Net Care Pool (Uncompensated Care) <http://www.hsd.state.nm.us/training-for-providers.aspx>
6. Disproportionate Share Hospital <https://www.medicaid.gov/medicaid/financing-and-reimbursement/dsh/index.html>
7. HQII yearly reports
<https://www.hsd.state.nm.us/reports.aspx>

8. 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	HSD	2/22/2021
2. Acknowledgement of Receipt Form	Potential Offerors	2/26/2021
3. Pre-Proposal Conference	Agency	2/26/2021
4. Deadline to submit Questions	Potential Offerors	3/3/2021
5. Response to Written Questions	Procurement Manager	3/10/2021
6. Submission of Proposal	Potential Offerors	3/19/2021
7.* Proposal Evaluation	Evaluation Committee	3/22/2021-3/31/2021
8.* Selection of Finalists	Evaluation Committee	4/5/2021
9.* Best and Final Offers	Finalist Offerors	4/8/2021
10.* Oral Presentation(s)	Finalist Offerors	4/12/21-4/14/21
11.* Finalize Contractual Agreements	Agency/Finalist Offerors	4/15/2021
12.* Contract Awards	Agency/ Finalist Offerors	4/19/2021
13.* Protest Deadline	HSD	+15 days

* Dates indicated in Events 7 through 13 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. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State Human Services Department /Medical Assistance Division on the date indicated in Section II.A, Sequence of Events.

<https://newmexicohsd.bonfirehub.com/opportunities/39205>
[Open RFPs | New Mexico Human Services Department \(state.nm.us\)](#)

2. Acknowledgement of Receipt

Potential Offerors may submit electronically thru Bonfire the Acknowledgement of Receipt Form (APPENDIX A, to have their organization placed on the procurement Distribution List. The form must be returned to Bonfire <https://newmexicohsd.bonfirehub.com/opportunities/39205> by 5:00 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. Pre-Proposal Conference

A pre-proposal conference will be held as indicated in Section II.A, Sequence of Events, beginning at 1:00pm MST/MDT via GoToMeeting Please join the pre-conference from your computer, tablet, or smartphone <https://global.gotomeeting.com/join/882696213>. **Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager** (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All questions answered during the Pre-Proposal Conference will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal Deadline to Submit Written Questions

Potential Offerors may submit written via the procurement port questions via the procurement portal <https://newmexicohsd.bonfirehub.com/opportunities/39205> or submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 5:00 pm 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, 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).

An electronic version of the Questions and Answers will be posted to:

<https://newmexicohsd.bonfirehub.com/opportunities/39205>
[Open RFPs | New Mexico Human Services Department \(state.nm.us\)](#)

5. Submission of Proposal

At this time, only **electronic** proposal submission is allowed. **Do not** submit hard copies.

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN **5:00 PM** MST/MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **PROPOSALS RECEIVED AFTER THIS DEADLINE WILL NOT BE ACCEPTED.** The date and time of receipt will be recorded on each proposal. If an Offeror decides to use a third-party delivery entity to submit its proposal, it is still the responsibility of the Offeror to ensure that the delivery is made on time. An Offeror should take into account all factors regarding the delivery by the third-party entity and ensure that the delivery is made prior to the stated deadline. Weather delays, traffic jams, deliveries to the incorrect address nor any other reason for a delay will be accepted for failure to make the stated deadline.

Proposals must be submitted electronically through Human Services Procurement Portal. Refer to Section III.B.1 for instructions. Proposals submitted by facsimile, or other electronic means other than through the Human Services electronic procurement portal, ***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 Offeror.

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.

8. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., Sequence of Events or as soon as possible. Best and final offers may also be clarified and amended at finalist Offeror's oral presentation.

9. Oral Presentations

Finalist Offerors, as selected per Section II.B.8 above, may be required to conduct an oral presentation at a location to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. Whether or not Oral Presentations will be held is at the discretion of the Evaluation Committee and HSD.

10. 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.

11. Contract Awards

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. The award is subject to appropriate Department and State approval.

12. 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 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be delivered to:

Jolene A. Mondragon, Procurement Manager or Gary O. Chavez, CPO
Office of General Counsel
1474 Rodeo Rd.
Santa Fe, New Mexico 87505

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of these Conditions Governing the Procurement, Section II.C, 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 modify their proposal before the deadline for receipt of proposals through the Procurement Portal <https://newmexicohsd.bonfirehub.com/opportunities/39205>

Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. **Human Services 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 one-hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

The 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 Sections III.B.1.a.i and III.B.2.a.i, 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. 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) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and its evaluation team), 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.20. 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 unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

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/opportunities/39205>

[Open RFPs | New Mexico Human Services Department \(state.nm.us\)](https://newmexicohsd.bonfirehub.com/opportunities/39205)

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 of 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 an **unaltered** Letter of Transmittal Form (APPENDIX E), which must be **completed** and **signed** by the individual authorized to contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number);
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 required if the responses differ from the individual identified in A*);
3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award;
4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and
5. Be signed and dated by the person identified in #2 above; 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 respond to ALL items as indicated above, 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.

The New Mexico 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, per scope, in response to this RFP.

B. NUMBER OF COPIES

1. **ELECTRONIC SUBMISSION ONLY Responses (Human Services Procurement Portal, Bonfire Interactive, can be accessed at <https://newmexicohsd.bonfirehub.com/opportunities/39205>)**
2. **All vendors must register with the Procurement Portal to log in and submit requested information.**

Proposals in response to this RFP must be submitted through the Human Services Purchasing’s electronic procurement portal ONLY, the Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below. Separate the proposals as described below into separate electronic files for submission.

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal **must** be submitted in separate uploads as indicated below in this section, and **must** be prominently identified as “Technical Proposal,” or “Cost Proposal,” on the front page of each upload

- a) **Technical Proposals** – 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**. The Technical Proposals **SHALL NOT** contain any cost information.
 - i. **Confidential Information**: If Offeror’s proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files** :
 - One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.2.a above as **unredacted** (def. Section I.F.38) versions for evaluation purposes; and
 - One (1) **redacted** (def. Section I.F.27) 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;

- b) **Cost Proposals** – 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**.

For technical support issues go to Support@GoBonfire.com or visit their help desk forum at <https://bonfirehub.zendesk.com/hc>

The ELECTRONIC proposal submission must be fully uploaded in Human Services e-Procurement Portal by the submission deadline in Section II.B.6.

Any proposal that does not adhere to the requirements of this Section and **Section III.C.1 Proposal Content and Organization** may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be submitted as follows:

Organization of files/envelopes for electronic copy proposals:

1. Proposal Content and Organization

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

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

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions (from Section II.C.15)
- F. Offeror's Additional Terms and Conditions (from Section II.C.16)
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
 1. Organizational Experience
 2. Organizational References
 3. Oral Presentation
 4. Mandatory Specification
 5. Desirable Specification
 6. Financial Stability – (Financial information considered confidential, as defined in Section I.E. and detailed in Section II.C.8, should be placed in the **Confidential Information** binder, per Section II.B.1.a.i or Section II.B.2.a.i, as applicable)

- 7. New Mexico Preferences (if applicable)
- H. Other Supporting Material (if applicable)

Cost Proposal:

- 1. Completed Cost Response Form

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.**

A Proposal Summary may be included in Offeror's Technical Proposal (Binder 1), 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

A. Unless otherwise instructed, Offerors should respond in the form of a thorough narrative to each specification. The narratives, including required supporting materials will be evaluated and awarded points accordingly. DETAILED SCOPES OF WORK

Scope of Work #1 Facility Rates, Audits & Payments

I. Performance of Audits and Consulting Services

The audit agent will conduct a multitude of audits, cost reports, payments, rate settings, reconciliations, supplemental payment calculations, consultations, and assistance in evaluating new reimbursement methodologies for Hospitals, Home Health Agencies, Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs), Long Term Care Facilities (LTCs), Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs), Nursing Facilities (NF), Crisis Triage Centers (CTC) and Adult Accredited Residential Treatment Center (AARTC) that participate in the New Mexico Medicaid program. The audits will include desk and field audits and complete reports of the audits that must be submitted to the HSD on a timely basis. The auditor will also be performing data collection, payment calculation, and reporting for the Health Care Quality Surcharge (HCQS) program for the Nursing Facilities and ICF/IIDs.

II. Planning and Development

The objective of the planning and development task is to plan the Offeror's activities and to develop procedures to carry out the work required of Offerors by the RFP. This includes, but is not limited to:

- A. Audit objectives that define intended audit accomplishments;

- B. Audit procedures, which determine the quality of the financial information being provided;
- C. Audit instructions, which specify the requirements and guidelines for the audit;
- D. Audit forms, which are essential and maintain workplace safety and quality control;
- E. Time frames for completing audits, that identify the timing for the audit and the time period to be covered;
- F. Audit results, which are the written opinion of the auditor regarding the audit results, reported to the HSD;
- G. Create and update templates and forms; and
- H. Data needs necessary to complete the tasks identified below.

III. Hospital Audit Operations, for the entire term of this RFP, including, but not limited to the following:

- A. Calculate diagnostic related group (DRG) rates for applicable hospitals, as needed
- B. Perform a review and re-calibration of the DRG grouper on a yearly basis;
- C. Compute initial rates for new providers, by using the hospital's fiscal year
- D. Participate in appeals and requests for consideration;
- E. Monitor timely submission of costs reports, and submit a monthly summarized status report;
- F. Compute applicable final settlements and issue notice of settlements to providers;
- G. Inform the HSD when a provider is uncooperative or unwilling in providing cost report and other data;
- H. Maintain and distribute cost reporting forms to appropriate entity;
- I. Submit monthly status report updating the HSD on the progress being made to meet deadlines including but not limited to cost reports;
- J. Refer any material irregularities or suspicion of fraud to the HSD;
- K. Attend regularly scheduled contract management meetings.
- L. Compute all Disproportionate Share Hospital (DSH) ceilings as described in the State Plan;
- M. Compute Tax Equity and Finance Reduction Act (TEFRA) target rates;
- N. Determine which hospitals qualify for DSH payments and calculate amounts;
- O. Complete Accounting Transaction Requests (ATRs);
- P. Perform annual DSH audits to ensure that hospitals do not exceed their DSH limit as outlined in section 1923 (g) of the Social Security Act;
- Q. Provide the HSD with DSH redistribution scenarios;
- R. Track repayments and/or recoupments including but not limited to the supplemental payments such as DSH, SNCP, and cost settlements;
- S. Perform monitoring of the capital rate and the cost to charge ratio and calculate interim rates as needed;
- T. Prepare Notice of Public Reimbursements (NPRs) along with ATR's, if recoupment or payment is applicable;
- U. Develop/revise rules, policies, regulations, State Plan Amendments (SPAs) and ensure the HSD is following and in compliance with State and Federal requirements;
- V. Compute quarterly Indirect Medical Education (IME) payments and Graduate Medical Education (GME) Payments and complete ATRs;
- W. Calculate annual calculation for both IME and GME payments to providers; including but not limited to market basket index calculations;
- X. Assist the HSD in the transition of current programs to the new financial programs for hospital payments;

- Y. Assist HSD in developing criteria for administering a hospital Value Based Purchasing (VBP) program, and performing auditing/administrative functions of its operation;
- Z. Consult in the operation of the VBP program with a joint consideration of clinical and financial accountability between Managed Care Organizations and their provider networks, as desired by the HSD; and
- AA. The Contractor will provide and perform information and analysis of new SNCP program evaluation in meeting objectives to include, but not limited to, continued financing structure, Medicaid provider payment rates, beneficiary access to Medicaid services, financing of providers that serve the low-income uninsured, support of managed care plans in managing care, and other state specific circumstances as identified.
- BB. Safety Net Care Pool (SNCP) Programs:
 - 1. The Contractor shall assist HSD with the SNCP programs, which are currently under reconstruction.
 - 2. Review SNCP Applications
 - a) Assist the HSD in reviewing and examining accuracy of prior SNCP UC applications until 2023 to determine appropriate payments, recoupments, and redistributions. Ensure certification on Section A-C of the application is signed
 - b) Review correspondence submitted with the application and flag issues for resolution during desk review
 - c) Verify that required documents were submitted with the applications, including but not limited to the summary of their claims exhibits for each payer type.
 - d) Review UCC Summary tab and determine if reasonable payments appear to be reported for each of the payer categories where we would expect payments
 - e) Follow up with provider on any missing data elements or supporting documentation
 - f) Trace reported cost report data on the submitted application to the hospitals' 2552 C/R to:
 - (1) Verify that appropriate cost report was used in completing the application
 - (2) Audit/Monitor costs and days for routine service cost centers reported in Section G of the application to Worksheet B and W/S D-1 of the 2552 C/R
 - (3) Audit/Monitor costs and charges for ancillary service cost centers reported in Section G of the application to Worksheet B and C of the hospitals 2552 C/R
 - (4) Audit/Monitor organ acquisition costs and total usable organs, if applicable from Worksheet D-4, Part III to Sections J and K of the application
 - 3. Review Days/Charges and Payments for each payer category
 - a) Audit/Monitor reported total days, total charges, and payments for Medicaid fee-for- service and managed care organizations to Medicaid Management Information System (MMIS) data (if available)
 - b) Audit/Monitor reported total days, total charges, and payments for Cross-Overs, Other Eligible Out-of-State, and Uninsured to provider submitted data (if available)

- c) Analytically review current period application by comparing payer category totals to other data sources: such as prior period application and if the hospital is a DSH hospital, the most recent DSH examination results
 - d) Scan cost report groupings and verify that charges by payer category do not exceed total charges
 - e) Review a sample of high per diem and high CCR cost centers for reasonableness of groupings (does it appear provider is trying to shift days or charges to the high per diem or high CCR cost centers)
 - f) Trace usable organ counts to provider submitted documentation, if applicable
 - g) Scan the payment-to-cost ratios for each category of payer for reasonableness, if amounts appear unreasonable follow up with provider
 - h) Consider the need for additional detailed data or explanations from the provider if significant issues are identified
4. Review Payment Adjustments
- a) Review payment adjustments tab for reasonableness of amounts reported
 - b) Verify that all reasonable adjustments are input with the appropriate sign, and flow appropriately to the uncompensated care calculation
5. Adjust Amounts as Determined Necessary
- a) If adjustments to reported amounts are identified, propose adjustments to the application amount, and communicate those adjustments to the hospital
6. Summarize calculated UC amounts by hospital in a report to the HSD
7. Calculate the annual and quarterly UC pool payments for each hospital, which may require factoring in DSH payments in an Excel spreadsheet. Send spreadsheet to the HSD.
8. Compare the calculated UC amounts to the interim demonstration year payments made two years prior (i.e., DY8 application amounts would be compared to DY6 interim payments)
9. Audit hospitals financial statements to ensure UC costs are true and fair representation of UC costs.
10. Reconcile prospective payments made to hospitals against actual UC costs and calculate recoupments and redistributions in an Excel spreadsheet to the HSD
11. The contractor will provide a detailed work plan and deadlines.
12. Health Quality Incentive Initiative (HQII):
- a) Supply all performance measure results and validations from the HQII participating hospitals including but not limited to any approved substitutions and update and test data inquiries for changes in federal technical specifications and support the HSD in program implementation.
 - b) Calculate the HQII payment allocation as described in the Section 1115 Waiver.
 - c) Calculate and validate the minimum performance level (MPL) and high-performance level (HPL) for future demonstration year and obtain improvement targets from participating providers with validation.
 - d) Compile the HQII Annual Report as described in Section 1115 Waiver in a format approved by the HSD.
 - e) Obtain reporting results and provide to the HSD in an approved format for publication (website).

IV. Nursing Facility/ICF Audit Operations, for the entire term of this RFP, including, but not limited to the following:

- A. Calculate initial rates for new providers within 30-45 days for the following provider types: NF, ICF/IIDs, HHAs, FQHCs, RHCs;
- B. Calculate interim rates within 45 days to 6 months after computing the initial rates for the following provider types: NF, ICF/IIDs, HHAs, FQHCs, RHCs, CTC, and AARTC;
- C. Assist the HSD in the development of a new reimbursement methodology for Nursing Facilities;
- D. Assist the HSD in the implementation of a new reimbursement methodology for Nursing Facilities;
- E. Rebase rates for ICF/IID providers every 3 years to include reconsiderations;
- F. Participate in appeals and requests for reconsideration;
- G. Monitor timely submission of costs reports and submit a monthly summarized status report;
- H. Inform the HSD, specifically the Financial Management Bureau, Contract Manager, when provider(s) are uncooperative or unwilling in providing cost report data;
- I. Maintain and distribute cost reporting forms to appropriate entity;
- J. Submit monthly status reports regarding cost reports and other reports as requested by the HSD;
- K. Refer any material irregularities or suspicion of fraud to HSD's Medical Assistance Division;
- L. Attend regularly scheduled contract management meetings;
- M. Track payments and recoupments of Final Cost Settlements for Notice of Program Reimbursements (NPR's);
- N. Perform monitoring of the cost to charge ratio and calculate interim rates;
- O. On an annual basis, calculate nursing facilities, ICF/IID, FQHC and RHC rates based on a methodology outlined in the State Plan;
- P. Calculate annual reconciliation amounts for FQHC and RHC providers;
- Q. Compute applicable final settlements and issue notice of settlements to providers;
- R. Prepare Notice of Program Reimbursements (NPRs) along with Accounting Transaction Request (ATR), if recoupment is applicable;
- S. Develop/revise rules, policies, regulations, State Plan Amendments (SPAs) and ensure the HSD is in compliance with State and Federal requirements;
- T. Complete all aspects of the Upper Payment Limit (UPL) demonstrations prior to the start of each state fiscal year. Prepare any and all document(s) detailing UPL deliverables and data requirements in order to meet Federal requirements for mandatory reporting to the Centers for Medicare and Medicaid Services (CMS) per SMDL #13-003 and in part, section 1902(a)(30)(A) of the Social Security Act;
- U. Analyze UPL results for inconsistencies prior to submission to CMS. Assist the HSD in addressing questions and concerns regarding UPL; and
- V. The Contractor will assist HSD in the development of criteria and oversight functions of a NF value-based purchasing program and perform auditing/administrative functions related to its operation. It is the desire of HSD that the value-based purchasing program be operated with a joint consideration of clinical and financial accountability between Managed Care Organizations and their provider networks.
- W. HCQS:

1. Use quarterly reporting form for the nursing facility and Intermediate Care Facilities (ICF)/ Individuals with Intellectual Disabilities (IID) providers to report their quarterly resident day counts and net revenue.
2. Work with HSD/MAD, providers, and the New Mexico Taxation and Revenue Department (TRD) collection tool to be used on a quarterly basis to collect the necessary information to calculate the facilities health care quality surcharge and for use in calculating the surcharge rate going forward.
3. Meet with HSD and TRD upon request, to update the collection tool, if necessary, to account for changes in the program.
4. Send the collection tool to all nursing facility and ICF/IID providers on a quarterly basis and collect the provider's responses.
5. Work with providers to answer questions on completing the collection tool and follow up with delinquent providers to obtain their completed forms.
6. Review the data for consistency and proper reporting and summarize all the data into a database.
7. Transmit the data to HSD/MAD on a quarterly basis, on an agreed-upon timeline by HSD/MAD Program Manager. This data will be sent to TRD for use in calculating the provider surcharge.
8. Using prior period historical data, annually calculate the new assessment rate for the next period in accordance with HCQS.
9. Set a uniform rate per non-Medicare day, not to exceed the maximum allowed by federal law.
10. Calculate the rates to approximate six percent of the net revenue received in the aggregate by each group of facilities in the previous calendar year.
11. Review the calculated reimbursement rates for compliance with the upper payment limit. If rates exceed the upper limit, the surcharge rate will be lowered to a level that will result in reimbursement not exceeding the upper limit.
12. Use quarterly reporting form for the nursing facility and Intermediate Care Facilities (ICF)/ Individuals with Intellectual Disabilities (IID) providers to report their quarterly resident day counts and net revenue.
13. Work with HSD/MAD, providers, and the New Mexico Taxation and Revenue Department (TRD) collection tool to be used on a quarterly basis to collect the necessary information to calculate the facilities health care quality surcharge and for use in calculating the surcharge rate going forward.
14. Meet with HSD and TRD upon request, to update the collection tool, if necessary, to account for changes in the program.
15. Send the collection tool to all nursing facility and ICF/IID providers on a quarterly basis and collect the provider's responses.
16. Work with providers to answer questions on completing the collection tool and follow up with delinquent providers to obtain their completed forms.
17. Review the data for consistency and proper reporting and summarize all the data into a database.
18. Transmit the data to HSD/MAD on a quarterly basis, on an agreed-upon timeline by HSD/MAD Program Manager. This data will be sent to TRD for use in calculating the provider surcharge.

19. Using prior period historical data, annually calculate the new assessment rate for the next period in accordance with HCQS.
20. Set a uniform rate per non-Medicare day, not to exceed the maximum allowed by federal law.
21. Calculate the rates to approximate six percent of the net revenue received in the aggregate by each group of facilities in the previous calendar year.
22. Review the calculated reimbursement rates for compliance with the upper payment limit. If rates exceed the upper limit, the surcharge rate will be lowered to a level that will result in reimbursement not exceeding the upper limit.

V. CTCs and AARTCs

A. CTCs

1. The contractor shall establish reimbursement rates for licensed CTC providers.
 - a) The contractor shall provide a work timeline for each rate request.
 - (1) Conduct information gathering activities and develop a contextual understanding.
 - (a) Review background materials such as the New Mexico Administrative Code, Medicaid state plan, policy manual, service descriptions, stakeholder information, and other information available from the HSD.
 - (b) Prepare for and attend meeting with the HSD and providers to develop a contextual understanding of the facilities, service delivery environment, and the care needs of the patients and discuss any questions or concerns, which may have been expressed by providers to the HSD. Prepare notes and summaries of information gleaned.
2. Develop a provider cost survey in order to establish reimbursement rates.
 - a) Design and develop a cost survey based on background information, including the meeting with the HSD and providers. Ensure cost survey accounts for historical and projected costs as necessary. We will use an Excel template to gather responses. Prepare instructions and submission requirements.
 - b) Collaborate with the HSD to receive approval of the initial cost survey. Make edits/additions based on the HSD's preferences.
3. Collect data and information from providers
 - a) Prepare training materials and conduct cost survey training session. Document comments or concerns received from providers and update cost survey if necessary.
 - b) Send notifications to the providers with request to complete the survey, including follow-up and responding to inquiries. Coordinate receipt of completed surveys from providers, including tracking submissions, follow-up, and check-in process.
 - c) Conduct limited scope desk reviews of submitted cost data to identify allowable and non- allowable costs. Correspond with providers relating to questions or requests for additional or clarifying information. Make adjustments and/or corrections to data.

- d) Format and load cost survey data into database for analysis.
- 4. The contractor shall develop a rate methodology and calculate reimbursement rates for outpatient episode type bundled services, residential services with withdrawal management, and residential services without withdrawal management.
 - a) Prepare proposed rate methodology for the HSD's consideration. The rate methodology will account for direct care costs and indirect care costs, including wages and fringe benefits, non-personnel program costs, and administrative and facility overhead. The rate methodology may also consider factors such as productivity information, staff ratios, patient caseload, service volume, and market data (e.g., BLS salary data), subject to HSD approval.
- 5. Prepare draft rates based on the rate methodology and cost survey data.
- 6. Gather, analyze, and prepare data for the fiscal impact model, including information on historical services that will be included in the CTC reimbursement rates. Prepare and analyze fiscal impact options.
- 7. Prepare summary materials and other data to present to the HSD.
- 8. Present recommendations to the HSD for consideration. Make adjustments to the rates based on HSD preferences.
- 9. Develop and present deliverable to the HSD, which will include a written report to provide details regarding the selected methodology, draft rates, timeline, data collected, assumptions, calculations, projections, and other relevant information.
- 10. Optional Services
 - a) Although not encompassed within the proposed activities above, the contractor shall make themselves available to provide implementation assistance and other support to the HSD. These activities could include presentations and other communication strategies; coordination with other divisions and/or agencies, fiscal agent contractor, and managed care organizations; provider or HSD training;
 - b) assistance with manual updates and provider bulletins; and planning related to subsequent rate updates and rate setting for future CTCs.

B. AARTCs

- 1. The following activities on an ongoing basis related to establishing and updating the reimbursement rates associated with the AARTC providers:
 - a) Develop a cost survey/cost reporting tool for use with the AARTC providers moving forward.
 - b) Develop a cost survey tool to capture required cost information of AARTC providers, which includes identifying unallowable activities for Medicaid reimbursement purposes, such as room and board.
 - c) Develop instructions for the cost reporting tool to guide providers toward a consistent approach to completing the form and a consistent cost finding methodology.
 - d) The cost report initially developed will be utilized. Adjustments to the cost reporting form will be necessary over time, and the need for these adjustments will be reviewed on an annual basis.

2. Collect cost survey data from providers annually for use in evaluating their current rates.
 - a) Prepare and present an annual training session for providers to complete cost survey tool.
 - b) Resurvey providers annually to reevaluate the relationship of their current rates to their actual cost and utilization experience. In some cases, rates were currently set based on budgeted or projected costs and utilization,
 - c) Collect survey information from providers and supporting documentation for or claimed costs.
 - d) Conduct limited scope desk reviews of cost material to review for allowable and non-allowable costs and ensure consistent reporting among providers.
 - e) Generate revised reimbursement rates for each provider and provide the analysis to HSD/MAD for review and comparison to current reimbursement rates. If significant fluctuations are noted, it may be necessary to update the rates for AARTC providers.
3. Meet with HSD/MAD staff annually, date and time to be determined and approved by HSD/MAD Program Manager, to discuss revisions to the collection tool and rate setting process.
4. Meet to review established rates and discuss any issues or enhancements to the data collection as well as any needed training or educational opportunities for the upcoming year with the AARTC providers.

VI. Training

Provide training for appropriate state officials and providers on an as needed and requested basis.

VII. Consultation

Provide consultation and assistance relating to the revision of or development of regulations, compliance with Federal requirements or other consultation as requested. Represent the HSD and its goals by providing technical assistance and support to nursing facilities, intermediate care facilities for individuals with intellectual disabilities, rural health clinics, home health agencies, and federally qualified health centers.

Provide consultation and analysis to Medicaid reform and new policy initiatives at the federal level.

Scope of Work #2 CMS 64 Audits

I. Performance of Audits

The purpose of this Agreement is to engage an experienced auditor and consultant with a background in the health care industry to carefully create financial audits and reports required by Code of Federal Regulations (CFR) and Centers for Medicare and Medicaid Services (CMS), and a reconciliation that incorporates SHARE, third party systems such as OMNICAID, and federal reporting for Medicaid. The quality control functions performed by the contractor will ensure that HSD federal reporting and account balances are accurate. The audit agent will perform audits of the Managed Care Organizations (MCOs) Financial Audits required by CFR.

II. Planning and Development

The objective of the planning and development task is to plan, in concert with the HSD, the Contractor's activities and to develop working procedures to carry out the work required. The Contractor will collaboratively develop audit parameters with HSD. This includes, but is not limited to:

- A. Audit objectives that define intended audit accomplishments;
- B. Audit procedures, which determine the quality of the financial information being provided;
- C. Audit instructions, which specify the requirements and guidelines for the audit;
- D. Audit forms, which are essential and maintain workplace safety and quality control;
- E. Time frames for completing audits, that identify the timing for the audit and the time period to be covered;
- F. Audit results, which are the written opinion of the auditor regarding the audit results, reported to the HSD; and
- G. Data needs necessary to complete the tasks identified below

III. Reconciliation Services

A. **Analysis and Reconciliation** – The Contractor will provide consultation services, reviewing the internal controls and procedures currently in place and used historically to record and reconcile account balances from third party systems. The review will include tracing account balances recorded in SHARE and amounts included in federal reports to third party systems. All findings will be reported to the Department as they are discovered and confirmed. If additional deficiencies are identified, the Contractor will assist with the analysis of the additional issues identified and similarly evaluate and assist the Department with the identification of the specific items not properly reported.

B. **Evaluation of Procedures** – The Contractor will provide consultation services, reviewing the Department's procedures for reviewing account balances and preparing federal reporting and provide input for areas of improvement. Where necessary, this consultation shall also include a complete review of the Department's quality control efforts of posting third party transactions.

C. **Synthesis, Clarification and Final Report** – The Contractor shall provide further consultation services, considering any additional documentation, clarification, or other information provided by the Department and adjust all findings accordingly. The Contractor will also prepare and submit to the Department a document that summarize all reported findings.

IV. CMS REPORTING SUPPORT

A. Provide support in the preparation and completion of the CMS-64 and CMS-21 quarterly reports, complete quarterly reconciliations, provide support to any CMS questions/feedback as they arise, and assist/review federal draws request that are completed to ensure accuracy and timeliness.

- B. Provide HSD-ASD Grant Staff training and assistance as new staff are hired.

V. Managed Care Organization (MCO) Financial Audit

The objective of the planning and development task is to plan the Offeror's activities and to develop procedures to carry out the work required of Offerors by the RFP. This includes, but is not limited to:

- A. Audit objectives needed to define intended audit accomplishments;
- B. Audit procedures, which determine the quality of the financial information being provided;
- C. Audit instructions, which specify the requirements and guidelines for the audit;
- D. Audit forms, which are essential to maintain workplace safety and quality control;
- E. Time frames for completing audits, which identifies the timing for the audit and the time period to be covered;
- F. Reporting audit results to the department, which is the written opinion of the auditor regarding the audit results; and,
- G. Data needs, which identify the data needs necessary to complete the tasks necessary below.
- H. Audit of MLR Calculation
 1. Medical loss ratio (MLR) examinations will be completed on the three MCO's December 31, 2023 MLR submissions to comply with the state periodic audit requirements in 42 CFR §438.602(e);
 2. The examinations will be conducted in accordance with AICPA standards, and will be designed to test the accuracy of the data submitted by each MCO, utilized in calculating the MCO's MLR;
 3. Each examination will assess whether the MCO met the minimum 86% MLR requirement outlined in the state contract; and
 4. An examination report, including an explanation of any adjustments made, will be provided to HSD for each MCO's MLR calculation.

VI. Other Quality Control Functions

The Contractor will perform quality control functions on an as-needed basis related to third party transactions. The Department and Contractor may agree to other quality control functions as dictated by the needs of the Department.

VII. Training

Provide training for appropriate state officials and providers on an as needed and requested basis.

VIII. Consultation

Provide consultation and assistance relating to revision of or development of regulations, compliance with Federal requirements or other consultation as requested. Represent the HSD and its goals by providing technical assistance and support to hospitals. Provide consultation and analysis to changes made at the federal or state level to regulations, laws and funding.

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offeror **must**:

- a) provide a detailed description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as an experienced auditor and consultant with experience in the health care industry to conduct a multitude of various types of audits, cost reports, payments, rate settings, reconciliations, supplemental payment calculations, consultations, and assistance in evaluating new reimbursement methodologies. Also, to make recommendations related to rules and policies, that improve the delivery of services and yield more robust programs, and proactively identify opportunities to align and maximize project resources;
- b) provide a brief resume of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as any staff who will perform a primary function on awarded contract(s). Offeror must include key personnel education, work experience, and relevant certifications/licenses.
- c) describe at least two project successes and failures of an audit, accounting, program integrity and consulting services for government health program engagement. Include how each experience improved the Offeror's services.

2. Organizational References

Offeror must provide a list of a minimum of three (3) references from similar projects/programs performed for private, state or large local government clients within the last three (3) years.

Offeror shall include the following Business Reference information as part of its proposals:

- 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 name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire ("Questionnaire"), to the business references it lists. **The business references must**

submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror. It is the Offeror's responsibility to ensure the completed forms are submitted on or before the date indicated in Section 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 Offeror's score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

3. Mandatory Specification

The offeror must agree to perform the scopes of work as defined. A statement of concurrence is required. The scope of work shall consist of providing the products and services defined in Section IV.A, Detailed Scope of Work.

- a. Offeror Experience
 1. Corporate Experience
 2. Staff Experience
 - a. Personnel Resumes – Resumes of the project director, project manager, and key personnel, including previous experience relative to this project must be included.
- b. In a narrative format, offerors must identify the staff member(s) proposed to perform each task required by the scope of work in order to enable the Evaluation Committee to match and evaluate the proposed staff member(s) qualifications to perform the required task.

Offerors must provide a statement of concurrence to the following requirements:

Project Director: The Project Director will have direct experience in audit agent work related to hospitals, cost reports, and bookkeeping of cost settlements. The Director will serve as the point of contact for all contract work.

Project Manager: The Project Manager will have direct experience related to hospitals, cost reports, bookkeeping of cost settlements and cost accounting. Responsibilities will also include day-to-day project management and coordination, technical directions, and supervision of the supporting staff. The Project Manager will direct the development of procedures and systems necessary to successfully perform the various desk review, audit, rate settings, and related services requested under this RFP.

Staff Members will have direct experience with health care industry, UC applications, DSH eligibility, payments and reconciliations, cost report reviews, and on-site audits.

Information: Offerors staffing plan will provide adequate personnel to accomplish all work described in the Scope of Work. The successful Offeror must possess extensive knowledge and experience in financial accounting auditing; have working knowledge of

and experience in the health care industry, particularly with hospital, Home Health Agencies, Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs), Long Term Care Facilities (LTCs), Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDs), Crisis Triage Centers (CTC), Adult Accredited Rehabilitation Centers (AARTCs). UC applications, DSH eligibility, payments, and reconciliations, proactively identifying opportunities to align and maximize project resources as well as but not limited to, other healthcare organizations; and have direct working knowledge and experience in cost accounting.

“Audits of Providers of Health Care Services,” issued by the American Institute of Certified Public Accountants provides guidance on procedures to be applied and identifies other authoritative literature to be used in the design of audits (desk/field).

Staff location will depend on the nature of ongoing tasks. Meetings will normally be conducted at the MAD facilities in Santa Fe, New Mexico.

Work Plan

Offerors must demonstrate its ability to ensure successful and timely completion of all requirements as stated in this RFP. Offerors shall provide a description of how the project will be organized and managed including:

1. Planning, Development, and Implementation Stage – Showing all personnel to be assigned to the planning, development and initial implementation stage of this project and the relationship of this project and the personnel to the corporate structure. Give a brief narrative of each individual’s responsibilities. Pursuant to the contract, the Department will have the prerogative of requiring personnel replacements as necessary.
2. Operations Stage – Showing all personnel to be assigned to the operation of the tasks of the scope and the relationship of these personnel and this portion of the project to the corporate structure. Give a brief narrative of each individual’s responsibilities.
3. In a narrative format, Offerors shall address the methodology that will be used to carry out the work required by this RFP. This includes, but is not limited to:
 - a. Audit objectives
 - b. Audit procedures
 - c. Audit instructions
 - d. Audit forms
 - e. Times frames for completing audits; and
 - f. Reporting audit results to the Department in a timely manner.
4. In a narrative form, Offerors must describe how items identified in the summary scope of work will be accomplished. (AI through VI)
5. Offerors must include a timetable by this RFP.
6. In a narrative format, Offerors must provide training, philosophy including training seminars including a description of the type of

personnel which would conduct such training. Training shall include, but not be limited to, advising providers on specific Medicaid accounting and cost accounting techniques and practices.

7. Offerors must describe how confidential and secure information will be maintained in accordance with Federal regulations.

4. Desirable Specification

Points will be awarded based on the quality, organization, and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. (If no Oral Presentations are required all Offerors will receive the same number of total points for this evaluation factor).

Contractor will provide the Department with any future developments which may reduce cost savings to providers and/or the Department as soon as they have data to confirm these methodologies. The Contractor will provide statistical analysis, charts estimates to confirm this data.

C. 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 respond to ALL items, as indicated in Section II.C.30 and APPENDIX E, and to return a signed, unaltered 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.**

4. Oral Presentation

If selected as a finalist, Offerors agree 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 a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

5. Cost

Offerors must complete the Cost Response Form in APPENDIX D. Cost will be measured by the components detailed in Section IV.A, Detailed Scope of Work. All charges listed on APPENDIX D must be justified and evidence of need documented in the proposal.

- a.) Cost Report Audits: itemized by desk and field audits, this will include any administrative costs;
- b.) DRG;
- c.) GME and IME calculations, payment tracking and consultation;
- d.) DSH;
- e.) SNCP UC;
- f.) SNCP HQII;
- g.) UPL Calculations;
- h.) Rate settings; and
- i.) Consulting/training costs

Mandatory Cost Specifications

Offerors must propose a total cost of a four-year contract. The proposed cost will be evaluated using the following:

$$A + B(X) = C1$$

A = Price for conducting typical audit work for the four years

B = Hourly rate of consultation

X = Eighty hours of consultation

C1 = Total price for the four-year contract

The Department will then evaluate the total price of the contract using the following:

$$C1 + C2 + C3 = T$$

C1 = Total prices for a four-year contract

C2 = C1 plus inflator

C3 = C2 plus inflator

T = Total price of the four-year contract.

The total price for the contract will be based on the number of facilities contained in the attached list of providers (Appendix 1). Should the number of facilities increase or decrease

during the course of the contract, the average cost per facility and average cost per hour reported through “A” above will be used to amend the contract price.

Offerors must supply and define the inflator to be used. The inflator shall be a set figure and must be the same for years three and four of the contracts.

The Department recognizes that compensation rates for consultation will vary according to the level of factor A. A breakdown of average per facility cost and average per hour cost is a requirement. These amounts will be used to increase or decrease the contract amount if providers enter or leave the program.

Information: For each of the contract years, pursuant to Article 2 of the Contract Terms and Conditions, the Department shall pay the Contractor the agreed upon annual rate for the performance of the typical audit, prorated monthly. The Department shall pay the Contractor for subsequent contract years, if extended the relevant contract year rate plus and agreed upon inflator percentage. Costs are subject to modifications based on the increase or decrease in the number of facilities. Payment of audit services includes all Contractor related expenses and applicable New Mexico gross receipts taxes.

The Department shall pay the Contractor equal monthly installments for the typical scope of audit services upon receipt of an invoice and a satisfactory details status report detailing work performed. The status report shall include at a minimum the following information: name of facility; type of service to be completed (desk review or field audit, accounting, or consultant services); date cost report due, date cost report received, date service (desk review or field audit) completed.

The Contractor shall submit separate billing statements for consultation and assistance services as described in Appendix 8. These services require prior written approval by appropriate Department staff. The billing statement shall be provided with monthly statement by the Contractor and shall identify the date of the request, the subject matter of the requests, date (s) and type of service rendered, the number of hours billed and the total charge. The Contractor should be prepared to provide to the Department supporting documentation in order to justify the billing statement.

Do not include gross receipts taxes in the calculation. Gross receipts taxes will be a pass through from the State to the Contractor and be paid by the Contractor. The Contractor will be responsible for making all required tax payments.

The cost report form, which is included as Appendix 10 of this RFP, must be included as the last page of Offeror’s Cost 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.

Evaluation Factors <i>(Correspond to section IV.B and IV C)</i>	Points Available
B. Technical Specifications	
B. 1. Organizational Experience	200
B. 2. Organizational References	50
B. 3. Mandatory Specification	200
B. 4. Desirable Specification	200
C. Business Specifications	
C.1. Financial Stability	Pass/Fail
C.2. Letter Of Transmittal	Pass/Fail
C.3. Campaign Contribution Disclosure Form	Pass/Fail
C. 4. Oral Presentations	50
C.5. Cost	300
TOTAL POINTS AVAILABLE	1,000
C.7. New Mexico Preference - Resident Vendor Points per Section IV C. 7	
C.7. New Mexico Preference - Resident Veterans Points per Section IV C.7	

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Organizational Experience (See 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 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 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. B.3 Mandatory Specifications

Criteria: Provides thorough documentation that desirable specifications are met on Section IV. B.3.

4. B.4 Desirable Specifications

Criteria: Provides thorough documentation that desirable specifications are met on Section IV. B.4.

5. C.1 Financial Stability (See Table 1)

Pass/Fail only. No points assigned.

Pass/Fail only. No points assigned.

6. C.2 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

8. C.4 Oral Presentation (See Table 1)

Points will be awarded based on the quality, organization, and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror a presentation agenda. (If no Oral Presentations are held all Offerors will **receive the maximum amount of total points for this Evaluation Factor**). **C.6 Cost (See Table 1)**

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

Lowest Responsive Offeror's Cost

Each Offeror's Cost

X Available Award Points (300)

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 will 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

Facility Rates, Payments, CMS Compliance & Reporting
21-630-8000-0002

ACKNOWLEDGEMENT OF RECEIPT FORM

This Acknowledgement of Receipt Form should be signed and submitted no later than 5:00 pm as per schedule Section II. A., Sequence of Events Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

In acknowledgement of receipt of this Request for Proposal, the undersigned agrees that he or she has received a complete copy of the RFP, beginning with the title page, and ending with APPENDIX F.

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

This name and address will be used for all correspondence related to the Request for Proposal.

Submit Acknowledgement of Receipt Form to:
<https://newmexicohsd.bonfirehub.com/opportunities/39205>

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

The following definitions apply:

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

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

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

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals. “Person” means any corporation, partnership, individual, joint venture, association or any other private legal entity.

APPENDIX C
DRAFT CONTRACT

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT
(SAMPLE)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the “HSD,” 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 General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

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 HSD 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 HSD 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 GSD/SPD. All invoices MUST BE received by the HSD 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 HSD 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 HSD 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 SPD/CRB. All invoices MUST BE received by the HSD 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 HSD 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 HSD 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 HSD 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 GSD/SPD Contracts Review Bureau. 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 HSD may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the HSD's uncured, material breach of this Agreement.

B. Notice; HSD Opportunity to Cure.

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

2. Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD'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 HSD 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 HSD 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 HSD; (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 HSD'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 HSD'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 HSD 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 HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the HSD shall direct for the protection, preservation, retention or transfer of all property titled to the HSD 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 HSD upon termination and shall be submitted to the HSD 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 HSD to the Contractor. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the HSD 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 HSD 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 HSD.

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 HSD. 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 HSD.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the HSD, 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 HSD.

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 HSD 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 HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD'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 HSD'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 HSD.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HSD relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the HSD 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 HSD and notwithstanding anything in the Agreement to the contrary, the HSD 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 HSD 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 HSD.

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 HSD 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 HSD. 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 HSD 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 HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD 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 HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD 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 HSD 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 HSD. 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 HSD 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 HSD 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.

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 HSD: [name, address, email]

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 HSD 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 HSD'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 HSD, the HSD 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 HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD 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 HSD, 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:

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations

occurring in the workplace;

- a) Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);
 - b) 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:
 - (i) Abide by the terms of the statement; and
 - (ii) 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;
 - c) Notify the HSD 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;
 - d) 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:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) 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
- 3) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

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 HSD, 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 HSD, 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 HSD 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 HSD 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. Performance.

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by its employees, its subcontractors, and/or Business Associates (BA), as applicable, with the following requirements:

A. All work will be performed under the supervision of the Contractor, the Contractor's responsible employees, and the Contractor's subcontracted staff.

B. Contractor agrees if Protected Health Information (PHI) as defined in 45 C.F.R. § 160.103, limited to PHI received from, or created on behalf of, HSD by Contractor; or Personally Identifiable Information (PII) as defined by the National Institute of Standards of Technology, limited to PII received from, or created on behalf of, HSD by Contractor pursuant to the Services; are collectively referred to as Confidential Information in Article 10 of this Agreement, made available to Contractor, shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or subcontractor of the Contractor is prohibited.

C. Contractor agrees that it will account for all Confidential Information upon receipt and store such Confidential Information in a secure manner before, during, and after processing. In addition, all related output will be given the same level of protection by the Contractor as required for the source material.

D. The Contractor certifies that the Confidential Information processed during the performance of this Agreement will be purged from all electronic data storage components in Contractor's facilities, including paper files, recordings, video, written records, printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed or when this Contract is terminated. If immediate purging of all electronic data storage components is not possible, the Contractor certifies that any Confidential Information remaining in any storage component will be safeguarded to prevent unauthorized disclosures beyond the term of this Agreement as long as Contractor is in possession of such Confidential Information.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of Confidential Information will be given to the HSD or his or her designee. When this

is not possible, the Contractor will be responsible for the destruction (in a manner approved by the HSD) of the spoilage or any intermediate hard copy printouts, and will provide the HSD or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

F. All of Contractor's computer systems, office equipment, written records, and portable media receiving, processing, storing, or transmitting Confidential Information must meet the requirements defined in relevant federal regulations such as HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), and/or any other Federal requirements that may apply to this contract. To meet functional and assurance requirements, the security features of the Contractor's environment must provide for security across relevant managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Confidential Information.

G. No work involving Confidential Information furnished under this Agreement will be subcontracted without prior written approval of the HSD.

H. The Contractor will maintain a list of its personnel, subcontractors, and/or business related entities with authorized access (electronic or physical) to HSD Confidential Information. Such list will be provided to the HSD and, upon request, to the federal agencies as required.

I. The Contractor will provide copies of signed acknowledgments for its staff and its subcontractors and/or Business Associates, to provide certification that relevant information security awareness and training was completed. These certifications will be provided to the HSD upon contract start and, at a minimum, annually thereafter during the term of this Agreement.

J. The HSD will have the right to terminate the contract if the Contractor or its subcontractors or Business Associates fail to provide the safeguards described above, consistent with the termination clause herein.

K. Upon request, the Contractor will provide the HSD copies of current policies and/or summaries of its current plans that document Contractor's privacy and security controls as they relate to HSD Confidential Information. This includes, at a minimum, any System Security Plans which describe the administrative, physical, technical, and system controls to be implemented for the security of the Department's Confidential Information. The plan shall include the requirement for a Contractor notification to the Department Security Officer or Privacy Officer of breaches or potential breaches of information within three (3) days of their discovery.

L. All incidents affecting the compliance, operation, or security of the HSD's Confidential Information must be reported to the HSD. The Contractor shall notify the HSD of any instances of security or privacy breach issues or non-compliance promptly upon their discovery, but no later than a period of three (3) days (as stated above). Notification shall include a description of the privacy and security non-compliance issue and corrective action planned and/or taken.

M. The Contractor must provide the HSD with a summary of a corrective action plan (if any) to provide any necessary safeguards to protect PII from security breaches or non-compliance discoveries. The corrective action plan must contain a long term solution to possible future privacy and security threats to PII. In addition to the corrective action, the Contractor must provide updates as to the progress of all corrective measures taken until the issue is resolved. The Contractor shall be responsible for all costs of implementing the corrective action plan.

N. The HSD will have the right to seek remedies consistent with the liability terms of this contract Agreement and/or terminate the Agreement if the Contractor or its Subcontractors or Business Associates fail to provide the safeguards or to meet the security and privacy requirements to safeguard Confidential Information as described above, consistent with the liability and/or termination clauses herein.

O. All client files and patient records created or used to provide services under this Agreement, as between the parties, are at all times property of HSD. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon consideration and mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required of Business Associate hereunder.

P. HSD Personally Identifiable Information (PII) cannot be accessed by HSD employees, agents, representatives, or contractors located offshore, outside of the United States territories, embassies, or military installations. Further, HSD PII may not be received, processed, stored, transmitted, or disposed of by information technology (IT) systems located offshore.

31. Criminal/Civil Sanctions.

A. It is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C.552a(i)(1), which is made applicable to contractors by 5 U.S.C.552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to HSD records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully disclose the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

B. Contractor agrees that granting access to PHI and PII must be preceded by certifying that each individual understands the HSD's applicable security policy and procedures for safeguarding PHI and PII. Contractors must maintain their authorization to access PHI and PII through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review.

32. Inspection.

The HSD shall have the right, with 24 hour notice, to send its inspectors into the offices and plants of the Contractor to inspect the facilities and operations provided for the performance of any work related to PHI and PII under this Agreement. On the basis of such inspection specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

33. Contractor's Responsibility For Compliance With Laws and Regulations.

A. The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor's performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.

B. The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement to be properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement and Exhibit A.

C. If the Contractor's performance of its obligations under the terms of this agreement qualifies it as a Business Associate of the HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to execute the HSD Business Associate Agreement (BAA), attached hereto as Exhibit B, and incorporated herein by this reference, and comply with the terms of the BAA and subsequent updates. *[Use this paragraph C only if a BAA is included as Exhibit B. Either way, delete this italicized comment.]*

34. Contractor's Responsibility For Compliance With Laws and Regulations Relating To Information Technology.

The Contractor agrees to monitor and control all its employees, subcontractors, consultants, or agents performing the Services under this PSC in order to assure compliance with the following regulations and standards insofar as they apply to Contractor's processing or storage of HSD's Confidential Information or other data:

1. The Federal Information Security Management Act of 2002 (FISMA);
2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
4. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
5. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

35. 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of signature by the GSD/SPD Contracts Review Bureau below:

By: _____ Date: _____
HSD Cabinet Secretary

By: _____ Date: _____
HSD Chief Financial Officer

Approved for legal sufficiency:

By: _____ Date: _____
HSD 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:

CRS ID Number: _____

By: _____ Date: _____
Tax and Revenue Department Representative

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

By: _____ Date: _____

Exhibit A
SCOPE OF WORK

Exhibit B

HIPAA Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into between the New Mexico Human Services Department (“Department”) and_____, hereinafter referred to as “Business Associate” , in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

BUSINESS ASSOCIATE, by this PSC ___ has agreed to provide services to, or on behalf of the HSD which may involve the disclosure by the Department to the Business Associate (referred to in PSC _____ as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in PSC _____ , and is hereby incorporated therein.

THE PARTIES acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

1. Definition of Terms

- a. Breach. “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. Business Associate. "Business Associate", herein being the same entity as the Contractor in PSC_____, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. Department. "Department" shall mean in this agreement the State of New Mexico Human Services Department.
- d. Individual. "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. HIPAA Standards. “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:
 - i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.

- ii. Breach Notification Rule. “Breach Notification” shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- iii. Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
 - f. Security Standards. “Security Standards” hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
 - g. Administrative Safeguards. “Administrative Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
 - h. Physical Safeguards. “Physical Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
 - i. Technical Safeguards. “Technical Safeguards” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
 - j. Policies and Procedures and Documentation Requirements. “Policies and Procedures and Documentation Requirements” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
 - k. Protected Health Information. "Protected Health Information" or “PHI” shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
 - l. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
 - m. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
 - n. Covered Entity. "Covered Entity" shall have the meaning as the term “covered entity” defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

2. Obligations and Activities of Business Associate

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC ____; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.
 - i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.

- ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.
 - iii. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC _____, except where a “limited data set” is not practicable in order to accomplish those activities.
 - iv. Except as otherwise limited by this BAA or PSC _____, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - v. Except as otherwise limited by this BAA or PSC _____, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
 - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC _____. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
 - c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC _____, the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
 - i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
 - ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
 - d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with

45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.
- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)], the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation

of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.

- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department 's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate’s contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation

During the term of this BAA or PSC ____, the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or PSC ____, and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of “Breach”, ¶ 2) based on at least the following factors: (i) the nature

and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.

- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

- g. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.

5. Term and Termination

- a. Term. This BAA terminates concurrently with PSC _____, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this PSC ____ and BAA for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon consideration and mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder.
- c. If Business Associate breaches any material term of this BAA, the Department may either:
 - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC ____ and BAA without liability or penalty in accordance with Article 4, Termination, of PSC _____, if Business Associate does not cure the breach within the time specified by the Department; or,
 - ii. immediately terminate this PSC ____ without liability or penalty if the Department determines that cure is not reasonably possible; or,
 - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or PSC _____, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

6. Penalties and Training.

Business Associate understands and acknowledges that violations of this BAA or PSC ____ may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

7. Miscellaneous

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC ____, shall be resolved to permit the Department to comply with the HIPAA Standards.
- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC ____, the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC ____ pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC ____ available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or PSC ____, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.

- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

APPENDIX D

COST RESPONSE FORM

(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)

Description	Type	Quantity	Cost per Item

All amounts provided must include all labor, materials, equipment, transportation, configuration, installation, training and profit to provide the goods and/or services described in Section IV.A, (as amended by any current RFP amendments for the period specified).

Option Year 1: (xx/xx/xxxx thru xx/xx/xxxx) Price: \$ _____

Option Year 2: (xx/xx/xxxx thru xx/xx/xxxx) Price: \$ _____

Option Year 3: (xx/xx/xxxx thru xx/xx/xxxx) Price: \$ _____

Option Year 4: (xx/xx/xxxx thru xx/xx/xxxx) Price: \$ _____

APPENDIX E

LETTER OF TRANSMITTAL FORM

APPENDIX E

Letter of Transmittal Form

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!**
(N/A, None, does not apply, etc. are acceptable responses.)

RFP#: 21-630-8000-0002

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED ID#	
NM CRS#	

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:

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

* 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. Use of subcontractors (Select one):

- No subcontractors will be used in the performance of any resultant contract, OR
 The following subcontractors will be used in the performance of any resultant contract:

 (Attach extra sheets, as needed)

4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractor listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, does not apply, etc. are acceptable responses to this item.)

 (Attach extra sheets, as needed)

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.

_____, 20_____
 Authorized Signature and 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. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Jolene A. Mondragon, Procurement Manager at jolenea.mondragon@state.nm.us by March 3, 2021 and 5:00pm MST/MDT 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 # 21-630-8000-0002
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. This Questionnaire is to be submitted to the State of New Mexico, Human Services Division /Medical Assistance Division via e-mail at:

Name: Jolene A. Mondragon
Email: jolene.mondragon@state.nm.us

Forms must be submitted no later than March 3, 2021 & by 5:00 pm **and must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings.

For questions or concerns regarding this form, please contact the State of New Mexico **Procurement Manager** at 505-827-3127 & jolene.mondragon@state.nm.us . When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

Organization providing reference	
Contact name and title/position	
Contact telephone number(s)	
Contact e-mail address	
Project description	
Project dates (start and end dates)	

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: