

NEW MEXICO HUMAN SERVICES DEPARTMENT

REQUEST FOR PROPOSALS (RFP)

BRAIN INJURY SERVICES



RFP# 19-630-8000-0001

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For State Fiscal Year 2020
(July 1, 2019 - June 30, 2020)

TABLE OF CONTENTS

I. INTRODUCTION.....	3
A. PURPOSE OF THIS REQUEST FOR PROPOSALS	3
B. BACKGROUND INFORMATION	4
C. SCOPE OF PROCUREMENT.....	8
D. PROCUREMENT MANAGER.....	10
E. DEFINITION OF TERMINOLOGY.....	11
II. CONDITIONS GOVERNING THE PROCUREMENT.....	16
A. SEQUENCE OF EVENTS	16
B. EXPLANATION OF EVENTS	16
C. GENERAL REQUIREMENTS	20
III. RESPONSE FORMAT AND ORGANIZATION.....	28
A. NUMBER OF RESPONSES	28
B. NUMBER OF COPIES	28
C. PROPOSAL FORMAT	28
IV. SPECIFICATIONS.....	31
A. DETAILED SCOPE OF WORK	31
B. INSTRUCTIONS FOR SUBMITTING RESPONSES TO FACTORS I, II, AND III FOR ALL SERVICES	31
C. MANDATORY SPECIFICATIONS	32
D. BUSINESS SPECIFICATIONS	46
V. EVALUATION OF PROPOSALS	48
A. EVALUATION PROCESS	48
B. EVALUATION POINT SUMMARY	49
APPENDIX A	50
ACKNOWLEDGEMENT OF RECEIPT FORM	50
APPENDIX B	51
LETTER OF TRANSMITTAL FORM.....	51
APPENDIX C	52
STATEMENT OF ASSURANCES	52
APPENDIX D	54
CAMPAIGN CONTRIBUTION DISCLOSURE FORM.....	54
APPENDIX E	57
NEW MEXICO EMPLOYEE HEALTH COVERAGE FORM	57
APPENDIX F.....	58
GEOGRAPHIC MAP OF NEW MEXICO.....	58
APPENDIX G	59
COST RESPONSE FORM AND FUNDING TABLE	59
APPENDIX H	61
SAMPLE CONTRACT	61
APPENDIX I.....	89
SAMPLE SCOPE OF WORK: SERVICE COORDINATION	89
APPENDIX J.....	97
SAMPLE SCOPE OF WORK: FISCAL INTERMEDIARY AGENT SERVICES	97
APPENDIX K	102
REFERENCE QUESTIONNAIRE.....	102
APPENDIX L.....	106
RESIDENT VETERANS CERTIFICATION.....	106

I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals to establish contracts with qualified professional agencies to provide non-Medicaid home and community based services to eligible individuals living with brain injury. These services are provided through the Human Services Department (HSD) Brain Injury Program and are funded through the Brain Injury Services Fund (BISF). Contracted providers are sought to provide direct services to New Mexicans with traumatic and other acquired brain injuries, who have crisis interim needs and are not eligible to receive services through Medicaid. All services are intended to resolve a participant's crisis needs, while enhancing self-determination and promoting independence. The specific direct crisis interim provider services required include:

1. Service Coordination (SC)– through a professional agency specializing in serving the brain injury /disability population in each of the five service regions.
2. Fiscal Intermediary Agent (FIA) --through a professional agency, which pays for specialized goods and services accessed by BISF participants, statewide, and through its development of a specialized provider network that is willing to serve individuals with brain injury.

Life Skills Coaching, another BISF Program component, will be a service arranged through the FIA component, and provided in regions where professional Life Skills Coaching or Life Coaching services are available, through certified/licensed providers.

Offerors may submit ONLY a single proposal for one of the two service components and commit to avoiding conflict of interest by providing ONLY ONE of these service components to enrolled participants of the BISF Program.

BISF services through qualified professional agencies will be contracted to begin in FY20 (July 1, 2019 – June 30, 2020) with opportunity at the discretion of HSD to renew contracts for an additional 3 years or any portion thereof, for the purpose of continued service provision. In no case will contract(s), including all renewals thereof, exceed a total of four (4) years in duration.

As a payer of last resort, the BISF Program provides brain injury specific services (including SC and FIA) and/or goods that are not available from other programs to meet a participant's crisis needs. Program services through the SC Agency and the FIA are provided in ninety (90) day increments, until a participant has become eligible to receive their critical services through a payer source that is independent of the Program or until the identified crisis need is otherwise resolved, allowing the individual to function independently in their homes and communities. All services are provided in accordance with the Traumatic Brain Injury Trust Fund Program regulations (NMAC 8.326.10) or new regulations and directions, as provided by HSD.

B. BACKGROUND INFORMATION

This section provides background on the Human Services Department and the operating environment of the Department which may be helpful to the Offeror in preparing the proposal. The information is provided as an overview and is not intended to be a complete and exhaustive description.

HSD MISSION AND ROLES

To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

HSD OVERVIEW

The NM Human Services Department (HSD) manages a budget of approximately \$7 billion dollars* of state and federal funds and administers services to more than 800,000 low-income New Mexicans through programs such as:

- Behavioral Health Services (mental illness, substance abuse and compulsive gambling)
- Child Support Establishment and Enforcement
- Community Services Block Grant (CSBG)
- General Assistance for low-income individuals with disabilities
- Low-Income Home Energy Assistance Program (LIHEAP)
- Meals for Homeless People
- Medicaid and Children's Health Insurance Program (CHIP)
- Refugee Resettlement Program (RRS)
- School Commodity Foods Program
- SNAP Education Program (SNAP-Ed)
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- The Emergency Food Assistance Program (TEFAP)

The programs are administered through four Program Divisions:

1. [Medical Assistance Division \(MAD\)](#)
2. [Income Support Division \(ISD\)](#)
3. [Child Support Enforcement Division \(CSED\)](#)
4. [Behavioral Health Services Division \(BHSD\)](#)

HSD is also a key member of the [NM Behavioral Health Collaborative](#) and works across state agencies to collaborate on behavioral health issues.

ORGANIZATION OF THE DEPARTMENT

The State of New Mexico Human Services Department is a cabinet-level Department in the Executive Branch of New Mexico State government. The Department is headed by a Cabinet Secretary appointed by the Governor and confirmed by the New Mexico State Senate.

As of March 2011, HSD had more than 1,800 authorized employees and maintained contracts with community-based providers throughout the state. There are over 34 HSD/ISD field office locations statewide, with an additional three (3) satellite offices. There are also eight (8) quality control offices statewide. HSD's central offices are currently located in three (3) Santa Fe buildings: Plaza La Prensa (Behavioral Health Services Division, Fair Hearings Bureau of the Office of Inspector General); Ark Plaza Building (Medical Assistance Division); and the BLM building on Rodeo Road (Administrative Services Division, Restitution Division of the Office of

Inspector General, Office of the Secretary, Income Support Division, Child Support Enforcement Division, and the Office of General Counsel and Information Technology Division).

HSD consists of the Office of the Secretary and six divisions. Only those divisions or bureaus within each division that are related to this RFP are described herein.

Office of the Secretary (OOS). The Office of the Secretary consists of the Secretary of Human Services, the two (2) Deputy Cabinet Secretaries, the Office of General Counsel, and the Office of Inspector General, as well as offices for Constituent Services and Communications.

The Secretary provides cabinet-level direction for HSD. The Office of General Counsel provides legal support for the Department. The Office of Inspector General investigates and pursues cases of fraud and abuse, and also administers the fair hearing process.

Administrative Services Division (ASD). The Administrative Services Division provides general administrative support for HSD and all its programs, including Medicaid.

Income Support Division (ISD). The Income Support Division is the primary source for eligibility determination for all HSD programs, including Medicaid. The Division's field staff of close to 1,000 employees, supervisors and county directors is administered through four district operations offices under the direction of two Deputy Directors. Field staff is responsible for interviewing applicants/recipients, determining eligibility, and issuing benefits for the food stamp, cash assistance, Medicaid, the State Coverage Insurance (SCI) program, and other assistance programs.

Medical Assistance Division (MAD). The Medical Assistance Division manages and administers the federal Medicaid program, which is authorized under Title XIX of the Social Security Act and provides access to medically necessary health services for eligible individuals. Federal contribution levels differ by program and vary based on relative ranking of the state in per capita income. The Division includes a variety of bureaus responsible for various aspects of administering the Medicaid program. HSD received approval from the federal Centers for Medicare and Medicaid Services for a single Section 1115(a) demonstration waiver of the SSA to implement Centennial Care effective January 1, 2014, with renewal under Centennial Care 2.0, implemented January 1, 2019. Under Centennial Care, the full array of current Medicaid services, including acute, behavioral health, certain home and community-based and long term institutional care (with the exception of PACE, includes programs requiring a nursing facility level of care) will be delivered through a managed care system with contracted health plans. HCBS in Centennial Care, called Community Benefits, will also include a self-direction component.

The New Mexico Medicaid Expansion provides Medicaid eligibility to adults who are at or below 133% of the Federal Poverty Level (FPL). Adults who qualify for this category will receive their Medicaid services either through a Centennial Care managed care organization (MCO) or the fee for service environment. **The Medical Assistance Division also houses non-Medicaid services, including the Brain Injury Program, within the Exempt Services and Programs Bureau (described below). One critical function of the Brain Injury Services Fund Program is to provide short-term crisis interim HCBS to qualifying individuals with brain injury, while assisting with applications for SSI, SSDI, Medicaid, and/or Medicare. BISF providers must also work to ensure seamless transition of eligible BISF participants with brain injury to Centennial Care Managed Care.**

Child Support Enforcement Division (CSED). The Child Support Enforcement Division is a state and federal program to collect support from non-custodial parents. Its primary mission is to maximize the collection of child support for all New Mexico children.

Behavioral Health Services Division (BHSD). The Behavioral Health Services Division's primary role is to serve as the adult Mental Health and Substance Abuse State Authority for the State of New Mexico. The Authority's role is to address need, services, planning, monitoring and continuous quality systemically for all adults across the state.

Exempt Services and Programs Bureau (ESPB). The ESPB manages the following programs: HCBS waivers for individuals with Developmentally Disabled (DD) and Medically Fragile (MF) conditions; ICF/IID facilities; EMSA; Medicaid school-based services; state-funded Brain Injury services; Family, Infant, Toddler contract; PACE; and the Mi Via Self-Directed Waiver. As the oversight agency for related HCBS waivers, HSD/ESPB works closely with the DOH DDSD, the operating agencies for the DD and MF waiver programs for both the traditional and Mi Via models. HCBS waivers are authorized by the CMS under section 1915(c) of the Social Security Act (SSA). These programs permit a state to furnish an array of home and community-based services that assist Medicaid recipients to live in the community and avoid institutionalization. Waiver services complement and/or supplement the services that are available to recipients through the Medicaid State plan and other federal, state or local public programs as well as support provided by families and communities. This Bureau also manages the Third Party Assessor (TPA) contract with Qualis Health, which is contracted to perform the Third Party Assessment and Utilization Review functions.

Brain Injury Services Fund (BISF) Program. As a non-Medicaid program, the Brain Injury Services Fund Program is housed within the Exempt Services and Programs Bureau of the Medical Assistance Division (MAD). This program provides programmatic oversight and funding for the contracted providers of both direct and support services for individuals living with brain injury.

Direct Brain Injury Services (for the purposes of this procurement) include two service components: 1) Service Coordination and 2) Crisis Interim Fiscal Intermediary Services. These services are further described in Section C. Scope of Procurement. These services are provided to eligible individuals, who are not enrolled in Medicaid. Life Skills Coaching, a service component described in the program regulations (8.326.10.11 NMAC) is a service that is covered using licensed/certified providers arranged through the Fiscal Intermediary Agent's network of specialized providers.

Brain Injury Support Services (not included in this procurement) are currently contracted through ARCA's Acquired Brain Injury Division, housing the New Mexico Brain Injury Resource Center (NMBIRC), as part of a Community Center dedicated to serving New Mexicans living with brain injury. Support services include Information, Outreach and Referral services, including a statewide brain injury hotline, resource center, and website: <https://www.arcaopeningdoors.org/services/new-mexico-brain-injury-resource-center/>. These services are available to the general public statewide, including but not limited to anyone living with brain injury, caregivers and family members, and professionals working with brain injury.

Only Direct Brain Injury Services are being sought through this procurement.

BACKGROUND INFORMATION ABOUT BRAIN INJURY

Traumatic Brain Injury (TBI) is an insult to the brain, not of congenital or degenerative nature, caused by an external physical force, which may or may not have produced a diminished or altered state of consciousness, but results in impairment(s) in cognitive, psycho-social, and/or physical functioning. Such injuries result when outside acceleration, deceleration, rotational and/or shearing forces cause the brain to be violently jarred or displaced within the otherwise protective casing of the skull. A TBI is defined as one type of Acquired Brain Injury, which may be acquired by traumatic means following birth.

Other Acquired Brain Injuries (ABI) which are not caused by an external force or trauma, may result in many of the same symptoms associated with Traumatic Brain Injury. Major causes of ABI are strokes, tumors, infectious diseases, toxic and chemical substances, vascular lesions, surgical procedures, and incidents associated with a lack of oxygen to the brain, such as anoxia.

Brain injuries of any degree disrupt the normal functioning of the brain and are a major public health concern, nationwide, with 153 new TBIs occurring each day. According to statistics gathered by the Centers for Disease Control and Prevention (CDC), more than “50% of people with TBI will experience further decline in their daily lives or die within 5 years of their injury”. Among those who survive a TBI, 57% are moderately or severely disabled, and more than 96% of these individuals are unable to return to previous employment. In 2007, the Centers for Disease Control and Prevention (CDC) conducted a multi-state assessment of TBI-related deaths and hospitalizations, which revealed that of the 34 states studied, NM had the second highest TBI fatality rate. According to extrapolated figures from the CDC, TBI is the leading cause of death and disability in persons under the age of 45 in New Mexico, and an estimated 40,000 New Mexicans currently live with a disabling brain injury (based on 2% of the New Mexico population of 2 million). CDC further reported that 12 counties – Socorro, Torrance, Valencia, Rio Arriba, San Miguel, Taos, Union, McKinley, San Juan, Quay, Luna and Sierra - are above the 75th percentile in Brain Injury incidence. The latest CDC statistics can be found at http://www.cdc.gov/traumaticbraininjury/get_the_facts.html.

A March 2010 report to the Brain Injury Advisory Council by the NM Department of Health’s Office of Injury Prevention in the Epidemiology and Response Division disclosed that an average of 9,020 brain–injury related discharges occur from both general hospital and specialty facilities annually. An average of 7,631 per year included ABI-related conditions, while an average of 1,389 were due to TBI-related conditions. Hospitalizations in NM occur at an annual rate of 383 per 100,000 population for ABI and 70 per 100,000 for TBI. These figures do not include emergency department visits. A review of hospital inpatient discharge data from the New Mexico Health Policy Commission reveals that Brain Injury is the most common of all non-fatal injuries that typically require access to long-term care services.

As a result of Legislative action by the 2014 NM Legislature, the service definition of brain injury in FY15 expanded from one that included Traumatic Brain Injury only to one that now includes other Acquired Brain Injuries, as well. State Brain Injury Services through the Brain Injury Services Fund provide short-term interim services to qualifying individuals, until State Medicaid services or services through other payer sources can be accessed.

STATE BRAIN INJURY SERVICES

The Brain Injury (BI) Program within HSD offers short-term crisis interim services for individuals with Traumatic and other Acquired Brain Injury, who are not eligible to receive assistance from other programs. More specifically, using BISF funding, the BISF Program contracts with Service Coordination agencies and a Fiscal Intermediary Agent (FIA) to provide Service Coordination and BI-specific home and community based services (HCBS) and/or products not available from other programs to meet participants' BI-related needs following their Brain Injury. BISF HCBS, paid for through the FIA, also covers professional Life Skills Coaching. All services are provided on a short-term 90-day basis to residents of NM with a confirmed diagnosis of Brain Injury, in 90-day increments, for up to one year. Program participants are reassessed every 90 days to determine an ongoing need for services. A Program participant will continue to receive such services, based upon available funding, until the identified crisis situation is resolved; until the participant has become eligible to receive the same type of services from another payer source; or until the participant becomes eligible to receive services from other programs, including but not limited to Medicaid or Medicare. Services may continue for more than 90 days for the provision of unfilled needs, based on quarterly reassessments, in accordance with TBI Program regulations, if the need for continued support is justified. The BISF Program is an interim program and is not intended to provide services, care, or goods long-term. Research on brain injury issues demonstrates that individuals, who receive prompt assistance with services and treatment following brain injury, experience shorter recovery times, a lesser degree of social failure, and are less prone to lifelong disability. Without prompt services and referral for appropriate diagnosis and treatment, the effects of brain injury quickly and negatively impact State Social Service and Judicial systems.

State long-term service options for Medicaid-qualified individuals with brain injury include Agency-Based or Self-Directed services, under the Community Benefit and Nursing Facility care.

Individuals with brain injury, who are interested in applying for health insurance, income support, or Medicaid services, can seek assistance through BISF Service Coordinators. They are also encouraged to contact NM's Aging and Disability Resource Center to request placement on the Central Registry. Contracted BISF service providers are essential in mitigating the socially devastating effects for those living with brain injury, without short-term or long-term services.

C. SCOPE OF PROCUREMENT

The initial term for contracts will be twelve (12) months. Human Services Department (HSD) reserves the option of renewing the initial contract(s) on an annual basis for three (3) additional years, or any portion thereof, for the purpose of continued service provision. In no case will contract(s), including all renewals thereof, exceed a total of four (4) years in duration.

Initial contracts funded through this RFP will be awarded for the period beginning with the date of approval by the Department of Finance and Administration (DFA) to June 30, 2020. All contract awards shall be subject to HSD and DFA contract provisions. This will be a multi-source award.

Subject to program revenues and appropriations, the total combined amount available for

contracting the two direct provider services in FY20 is \$1,213,310 (see APPENDIX G for funding table).

- A total of \$529,200 will be available for Service Coordination (2 Metro, 2 NE, 1 NW, 1 SE, and 1 SW), including costs related to delivery of the SC service and any administrative and indirect costs.
- A total of \$684,110 will be available for the statewide provision of Fiscal Intermediary Agent services, including \$525,250 for the payment of actual expenses related to the delivery of BISF HCBS goods and services and a total of \$128,860 for administrative and indirect costs.
- Contracts are funded through the Brain Injury Service Fund, which incurs revenues through a \$5 fine applied to moving traffic violations in NM.

The Human Services Department (HSD) requests proposals for the BISF Program for two provider areas as follows: (Offerors may only submit one proposal for the delivery of one of the two services in response to this request.)

1. Service Coordination (SC)

Service Coordination (SC) services are intended to be short-term services that include, but are not limited to, assessing, planning, coordinating, customizing, and monitoring participant home and community-based services funded by HSD's BISF Program. Service Coordinators are expected to problem-solve, ensure continuity, prevent fragmentation of services and endeavor to tap into any and all resources that are appropriate and accessible, including community-based supports, while resolving the crisis that brought the participant into the program. Services provided are NOT long-term case management services. Rather, the services provided are expected to enhance the participant's self-care and self-determination, promote independence from the program, promote independent functioning in the home and community, and encourage optimal individual and family participation. All participants must have a BISF Program Service Coordinator before they can receive any other BISF Program services. Depending on assessed needs, Service Coordinators will file referrals for BISF HCBS, including professional Life Skills Coaching, for individual program participants with the BISF Fiscal Intermediary Agent, who will arrange for and pay for needed goods and services, through its specialized network of brain injury providers. SCs are also responsible for monitoring progress and outcomes related to all BISF HCBS, including professional Life Skills Coaching.

Selected contractors are expected to be professional social workers with training and experience in brain injury and behavioral health issues per the Program's regulatory requirements (8.326.10.10.D NMAC) regarding staff qualifications. The SC service is intended to more efficiently resolve participant crises by reducing the stress participants face in managing multiple case workers and appointments, in their efforts toward greater independence. The SC agency is also expected to follow-up on and manage critical incidents involving participants, as they are reported to HSD.

2. Fiscal Intermediary Agent (FIA) BISF Services

Fiscal Intermediary Agent (FIA) services for the arrangement of brain injury specific home and community based services (HCBS) require the professional services of an

agency experienced in professional fiscal management with the capacity to develop and manage a specialized network of brain injury healthcare and other providers and per the Program's regulatory requirements (8.326.10.14.B NMAC) regarding staff qualifications. The FIA for these services is expected have sufficient knowledge of brain injury to be able to educate HCBS vendors about the brain injury specific needs of enrolled participants in working through any service delivery issues and respond to critical incidents that concern the brain injury participant's BISF HCBS.

BISF HCBS include all of the "crisis interim" listed in the TBI regulations (8.326.10.13 NMAC), but also include professional Life Skills Coaching. BISF HCBS are short-term services that can be accessed upon referral by a BISF SC to resolve a crisis need that is directly related to the individual's brain injury. Services may be provided following a participant's initial brain injury; whenever there has been a sudden change in their medical, psychological or physical condition; or in the event that a new crisis has arisen. BISF HCBS are only accessible through the coordination of a BISF Program Service Coordination agency and are limited to filling a participant's needs, when there is an imminent risk to the participant's health and safety. Funds may be used to pay for the services and goods that have been formally assessed as a need by BISF Service Coordinators. Payment for BISF HCBS services and goods is only available in the event that another payer source cannot be identified.

Detailed descriptions and requirements (factors) for these services are located in Section IV, APPENDIX I (SC) and APPENDIX J (FIA).

D. PROCUREMENT MANAGER

1. HSD has assigned a Procurement Manager who is responsible for the conduct of this procurement. The Procurement Manager is the single point of contact during the procurement. Her name, address, telephone number and e-mail address are listed below:

Name: Linda Gillet, Ph.D., Procurement Manager
 Address: HSD/MAD/ESPB
 2025 S Pacheco, PO Box 2348
 Santa Fe, NM 87504-2348

Telephone: (505) 827-7218
 Fax: (505) 827-3138 **(Faxed proposals and references will NOT be accepted.)**
 Email: lindab.gillet@state.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Name: **Linda Gillet, Ph.D.**
 Reference RFP Name: **RFP# 19-630-8000-0001 (Brain Injury Services)**
 Address: **HSD/ASD/CMPB**
1474 Rodeo Rd.
Santa Fe, NM 87505

3. 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.
4. If the person completing the proposal has a disability that requires a reader, amplifier, sign language interpreter or any other form of auxiliary aid/service to participate in any aspect of this process, they may contact the Procurement Manager listed above at least two weeks prior to the submission deadline. Alternately, they may access assistance through the Center for Non-Profit Excellence, a program of the United Way of Central New Mexico, which administers the New Mexico Relay Network:
<https://www.centerfornonprofitexcellence.org/nonprofit-directory/nonprofit/27226>

E. DEFINITION OF TERMINOLOGY

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

“ABI” means Acquired Brain Injury, which under the BISF service definition includes injuries to the brain arising from stroke, brain tumors, anoxia, aneurysms/vascular lesions, brain infections, shaken baby syndrome, lightning/electric shock, or exposure to toxic or chemical substances. Technically, the definition includes Traumatic Brain Injuries, as well, which may be acquired during an individual’s lifetime. The definition excludes conditions of a congenital or strictly degenerative nature.

“Agency” means the Human Services Department, unless otherwise defined.

“Award” means the final execution of the contract document.

“BISF” means Brain Injury Service Fund, which provides non-Medicaid short-term Service Coordination and BISF home and community based services (HCBS, a.k.a. “Crisis Interim services”), including professional Life Skills Coaching, to individuals who have a confirmed diagnosis of brain injury. It is funded by a \$5 fee applied to NM moving traffic violations and administered through the NM Human Services Department.

“BI” or “Brain Injury” means an injury to the brain of traumatic or acquired origin resulting in total or partial functional disability, psychosocial impairment, or both. The term applies to open and closed head injuries caused by an insult to the brain from an outside physical force; anoxia, electrical shock; shaken baby syndrome; toxic and chemical substances; near-drowning; infections; tumors, or vascular lesions. BI may result in either temporary or permanent, partial or total impairments in one or more areas including, but not limited to cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. For the purposes of the Brain Injury Services Fund Program, the definition excludes conditions of a congenital or strictly degenerative nature.

“Business Hours” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“Close of Business” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“Contract” means any agreement for the procurement of items of services, construction, or tangible personal property.

“Contractor” means any business having a contract with a state agency or local public body.

“Department” means the Human Services Department.

“Desirable” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

“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.

"DFA" means the Department of Finance and Administration for the State of New Mexico.

“Evaluation Committee” means a body appointed by the Department to perform the evaluation of Offerors’ proposals.

“Evaluation Committee Report” means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

“Factor” means a Section of the RFP that requires a response.

“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.

“FIA” or “Fiscal Intermediary Agent” or “Fiscal Intermediary”, as it applies to this RFP, means an organization that arranges for the brain injury specific services and goods that have been assessed as a need and which processes accounting payment activities for the entities associated with the Brain Injury Services Fund Program.

“HCBS” means “Home and Community Based Services”, which are defined as services to promote independent living that are provided in a person’s home or community, i.e., those not provided under institutional care. BISF HCBS are those that may be required when there has been a sudden change in the medical, psychological or physical condition of an individual; when there is acceleration in the amount of services needed, when needs have suddenly changed, or when another payer source will not pay for the unique BI services assessed as a need. BISF HCBS are provided to protect the client from imminent risk to his or her health and safety, or to protect the health and safety of others. These include home health care; homemaker services; respite care; outpatient mental/behavioral health; traditional and alternative therapies; medically-related transportation and medications related to the brain injury; physician co-pays; special equipment, communication/assistive devices, and durable

medical goods; professional organizer services; once in a lifetime housing assistance; environmental modifications; retrofit of an automobile, as well as Neuropsychological Evaluations. For the purposes of this RFP, they also include professional Life Skills Coaching services through licensed/certified providers, as they are regionally available.

“ICD-10 Code” means the diagnostic code used to designate a medical condition.

“ILP” means Independent Living Plan, which constitutes the range of services that have been assessed as a need to assist a participant in resolving a crisis and cultivating greater independence while living independently in their home and community.

“ISD” means Income Support Division.

“Life Skills Coaching” means services provided for individuals with Brain Injury to assist them in developing skills of independently performing routine daily tasks that will enhance the quality of their lives. Coaching is customized for each participant to assist them in meeting their unique brain injury related needs. Coaching is usually provided in the client's home, place of work or wherever an activity would normally occur. BISF Life Skills Coaching may also be provided to family members to help them adjust to their changing roles and circumstances following the brain injury of their family member. For the purposes of this RFP, professional LSC is available to participants with an assessed need by SC referral through the BISF FIA; this service cannot be provided by BISF Service Coordinators.

“MAD” means Medical Assistance Division of the Human Services Department.

“Mandatory” – the terms "must", "shall", "will", and "required" identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in the rejection of an Offeror's proposal.

“Minor Technical Irregularities” anything in the proposal that does not affect the price quality and quantity or any other mandatory requirement.

“Multiple Source Award” means an award of an indefinite quantity contract to more than one Offeror, for one or more similar services, items of tangible personal property or construction.

“Offeror” is any person, corporation, or partnership that chooses to submit a proposal.

“Participant” means client, consumer, or person receiving services from the BISF Program.

“Payer” means entity that pays for services.

“Price Agreement” means a definite or indefinite quantity contract that requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body that issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

“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. This is the person designated by the Department to be responsible for

the RFP. The only designated person from whom the offeror may receive RFP information during the process of submission and selection of a proposal.

“Procuring Agency” means the New Mexico Human Services Department.

“Program Manager” means the person or designee authorized by the Department to manage or administer direct work of a Contractor. This person is the Brain Injury Services Program Manager for the HSD Brain Injury Program.

“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 when the project scope is achieved and project acceptance is given by the project executive sponsor.

“Request for Proposals (RFP)” means all documents, including those attached or incorporated by reference, used for soliciting proposals.

“Responsible Offeror” means an Offeror that submits a responsive proposal and that has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.

“Responsive Offer” means an offer that 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.

“SC” means “Service Coordinator” or “Service Coordination”, defined as services that may include, but are not limited to, assessing, customizing, planning, coordinating, implementing and monitoring the BISF HCBS of an approved program participant to resolve their crisis needs to promote their independent functioning. Service Coordination enhances the individual's self-care and self-determination and includes optimal individual and family participation. Service Coordination is a problem-solving function that is intended to ensure continuity of services, prevent fragmentation of services, and tap into any and all resources that are appropriate and accessible for program participants living with brain injury, until other payer sources are identified or the crisis is otherwise resolved. It is the responsibility of BISF Service Coordinator to neither under-utilize nor over-utilize available services.

“Short-Term” means ninety (90) days for BISF SC or BISF HCBS accessed through the BISF Program for up to one year; interim.

“SPD” means State Purchasing Division of the New Mexico State General Services Department.

“Staff” means any individual who is a full-time, part-time, or an independently contracted employee with an Offerors’ company.

“State (the State)” means the State of New Mexico.

“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.

“State Purchasing Agent” means the director of the purchasing division of the general services department.

“TBI” means Traumatic Brain Injury, which constitutes an insult to the brain from an outside physical force that may or may not have produced a diminished or altered state of consciousness. The term applies to open or closed head injuries resulting in impairments in an individual’s cognitive, behavioral and/or physical functioning. Functional impairments may occur in one or more areas such as: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory; perceptual, and motor abilities; psychosocial behavior, physical function, information process and speech. Impairments may be either temporary or permanent and may cause partial or total functional disability and/or psychosocial disorientation.

“Unique Brain Injury Services” means covered services that are intended to meet the unique home and community based needs of individuals living with brain injury that are not available through any other funding source. These services are available to qualifying individuals on a short-term basis to resolve a crisis; until the individual’s care has been transferred to the State’s Medicaid managed care system or another payer source is available.

“Unit rate” means a rate per unit a contractor will be paid for services. Example amount “Per Member Per Month” is what HSD will compensate a contractor for Service Coordination.

F. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the materials contained in the Procurement Library by selecting the link provided in the electronic version of this document through your own internet connection or by contacting the Procurement Manager and scheduling an appointment.

The library for RFP # 19-630-8000-0001 contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:

http://www.generalservices.state.nm.us/statepurchasing/ITBs__RFPs_and_Bid_Tabulation.aspx.

Traumatic Brain Injury (TBI) Trust Fund Program Regulations, in 8.326.10 NMAC. The current regulations, as well as other BISF program information, may be obtained through the following web site address:

<http://www.hsd.state.nm.us/LookingForInformation/overview-1.aspx>

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:
(Times listed are Mountain Standard Time)

Action	Responsible Party	Due Dates	
1. Issue RFP	HSD	Issue	February 8, 2019
2. Deadline to Submit Acknowledgment of Receipt Form / Distribution List	Offerors / HSD		February 28, 2019
3. Pre-Proposal Conference	HSD / Offerors		February 28, 2019
4. Deadline to Submit Questions	Potential Offerors		March 8, 2019
5. Response to Written Questions	Procurement Manager		March 15, 2019
6. Submission of Proposals	Potential Offerors	Submit	March 28, 2019 3:00 pm MST
7. Proposal Evaluations	Evaluation Committee		April 1-5, 2019
8. Selection/Notification of Finalists	Evaluation Committee		April 8, 2019
9. Best and Final Offers	Finalist Offerors		April 18, 2019
10. Oral Presentation(s)	Finalist Offerors		TBD
11. Finalize Contractual Agreements	HSD/Finalist Offerors		April 29, 2019
12. Contract Awards	DFA/ Finalist Offerors	Award Notification	May 17, 2019
13. Protest Deadline	DFA		15 calendar days after contract award notice

* Dates subject to change based on number of responses to evaluate.

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State Human Services Department on **as stated in Section II, A. SEQUENCE OF EVENTS**. The RFP

and amendments, if any, may be downloaded from the following address: <http://www.hsd.state.nm.us/> under "Looking for Information/General Information/Requests for Proposals".

2. Distribution List Response Due

Potential Offerors should hand deliver, return by facsimile or by registered or certified mail the "**Acknowledgement of Receipt of Request for Proposals Form**" that accompanies this document, APPENDIX A, to have their organizations placed on the final official RFP Distribution List. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager as stated in Section II, A. SEQUENCE OF EVENTS and delivered no later than Close of Business on **as stated in Section II, A. SEQUENCE OF EVENTS**.

The procurement distribution list will be used for the distribution of written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the final official RFP Distribution List.

3. Pre-Proposal Conference

A pre-proposal conference will be held as indicated in the sequence of events beginning at **as stated in Section II, A. SEQUENCE OF EVENTS at HSD's Ark Plaza, 2025 S Pacheco, South Conference Room, Santa Fe, NM 87505, 1:30 pm Mountain Time**. Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed in writing on the date listed in the 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.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until **as stated in Section II, A. SEQUENCE OF EVENTS Mountain Time**. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D.

5. Response to Written Questions

As indicated in the sequence of events, written responses to written questions will be distributed to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. If this RFP is managed through state purchasing, additional copies will be posted to: [http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and Bid Ta_bulation.aspx](http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Ta_bulation.aspx).

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE **NO LATER THAN 3:00 PM MOUNTAIN DAYLIGHT TIME ON as stated 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.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Brain Injury Services RFP # 19-630-8000-0001. Proposals submitted by facsimile, or other electronic means, will not be accepted.

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

7. Proposal Evaluation

Proposals will be evaluated by an Evaluation Committee. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions for the purpose of clarifying aspects of the proposals with Offerors that submit responsive or potentially responsive proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by Offerors.

8. Selection of Finalists

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

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers 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 Offerors' oral presentations and demonstrations.

10. Oral Presentations

Finalist Offerors 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. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee.

11. Finalize Contractual Agreements

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

12. Contract Awards

After review of the Evaluation Committee Report and the signed contractual agreement, the Agency Procurement office will award as per the schedule in Section II. A. Sequence of Events, or as soon as possible thereafter. This date is subject to change at the discretion of the relevant Agency Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and HSD, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also include 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 the HSD protest manager, whose mailing address is:

Office of General Counsel
1474 Rodeo Road
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 the Conditions Governing the Procurement section in the Letter of Transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors identified in Sections IV and V of this RFP.

2. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of any 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 Contractor 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 written approval from the agency awarding any resultant contract, before any subcontractor is used during the term of this agreement.

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals

or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

- a. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
 - i. Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.
 - ii. Confidential data is restricted to:
 - a) confidential financial information concerning the Offeror's organization;
 - b) and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.
 - c) PLEASE NOTE: The price of products offered or the cost of services proposed **shall not be designated** as proprietary or confidential information.

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

Any contract awarded as a result of this RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such terminations will be effected 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 that may result from this procurement shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied, in writing, by the Agency through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The Contract between the Agency and a Contractor will follow the format specified by the Agency and contain the terms and conditions set forth in APPENDIX H, "Contract Terms and Conditions." However, the Agency reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

HSD discourages exceptions requested by Offerors to contract terms and conditions in the RFP (Sample Contract). If, in the sole assessment of HSD (and its evaluation team), a proposal appears to be contingent on an exception, or on correction of what is deemed by an offeror to be a deficiency, or if an exception would require a substantial proposal rewrite, a proposal may be rejected as nonresponsive.

The sample contract in APPENDIX H is HSD's generic contract. It does not contain the terms for confidential medical or personal information, which, depending on the nature of the procurement, may be added.

16. Offeror Terms and Conditions

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in APPENDIX B, the **Offeror must propose specific, alternative language in writing and submit it with its proposal.** Contract variations received after the award will not be considered. The Agency may or may not accept the alternative language. Offerors agree that requested language must be agreed to in writing by the Agency to be included in the contract. If any requested alternative language submitted is not so accepted by the Agency, the attached sample contract with appropriately accepted amendments shall become the contract between the parties. General references to the Offeror's terms and conditions or attempts at complete substitutions 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. Offerors

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

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, 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 Sections 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. The Evaluation Committee also reserves the right to waive mandatory requirements in instances where all 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, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil, 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.

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 Department, the Offeror acknowledges that the version maintained by the Department shall govern. Please refer to:

http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx.

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://www.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 revenue (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

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

30. Pay Equity Reporting Requirements

- a. If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if they are awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local Contractor.
- b. For contracts that extend beyond one (1) calendar year or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract.
- c. Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- d. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

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 three thousand dollars (\$3,000) 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 execution of this contract, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances. 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 be grounds for immediate termination of this Agreement pursuant to the conditions set forth in

Paragraph 26 of the Sample Contract (Appendix H).

- D. 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.
- E. 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 the execution of this contract. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

32. Copyright and Ownership of Brain Injury Project Documents, Products, Resources, and Materials

All materials developed or acquired by the entity awarded a contract under this RFP shall become the property of the State of New Mexico and shall be delivered in both printed and electronic formats, no later than thirty (30) days after the termination date of the contract. It is the responsibility of the contractor to provide electronic formats compatible with the systems designated by HSD. All such documents and/or products shall be indexed and placed in appropriately labeled format and delivered upon request. Nothing produced, in whole or in part, by the contractor shall be the subject of an application for copyright by or on behalf of the contractor. HSD maintains the right to modify materials and/or assign use of the materials as deemed appropriate.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one (1) proposal in response to this RFP.

B. NUMBER OF COPIES

Offerors must submit:

- One (1) **original** hardcopy binder of their proposal. The original proposal must contain original signatures and be marked "Original".
- Five (5) complete and **identical** binders with photocopies of their technical proposal. for a total of six (6) copies.
- A scanned electronic copy of the complete proposal. The electronic submission may be on a disk enclosed in a protective casing or on a flash-drive.

All 6 binders shall be labeled and tabbed according to the format outlined in Section III.C.

All Confidential Information shall be clearly identified and segregated on the electronic version mirroring the hard copy submitted.

Proposals must be submitted to the location specified in Section I, Letter D of this RFP on or before the closing date and time for receipt of proposals (Section II, Letter A). The Offeror shall not distribute the proposal to any entity not specified in this RFP.

Any proposal that does not adhere to the requirements of Section III.C, Response Format and Organization, may be deemed non-responsive and rejected on that basis.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 1/2" x 11" paper (larger paper is permissible for charts, spreadsheets, etc.), paginated, and placed within secure binders with tabs delineating each section, using the structure noted below. The pages should have a one-inch margin and font size should be no smaller than 12. The outside of each binder must identify the offeror and specify that the offer is in response to the "Brain Injury Direct Services Request for Proposals, RFP# 19-630-8000-0001. **A failure to follow these instructions may result in the immediate disqualification of the submitted proposal.**

1. Proposal Content and Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items *in the sequence indicated*.

- a. Signed Letter of Transmittal (see list of required details of this letter in Section 2 below (Section III, Letter C, Number 2 of this RFP))
- b. Table of Contents
- c. Proposal Summary

- Summary is to include overview of proposal, the service to be provided, and specification of the regions where the proposed services are to be provided.
- d. Response to Mandatory Specifications (See Section IV, Letter C)
 - Factor I: Administration and Performance
 - Factor IA: Organizational Experience and Performance
 - Factor IB: Program-Specific Administrative Responsibilities
 - Factor IC: Quality Assurance and Program Integrity
 - Factor ID: Organizational references
 - Factor II: Brain Injury Services and Scopes of Work
 - Factor IIA: General Requirements
 - Factor IIB: Component-Specific Requirements
 - Factor IIC: Evaluation of Proposed Services
 - Factor III: Cost Response Form
 - e. Statement of Assurances (See APPENDIX D)
 - f. Copy of Financial Statements and Documents Noted in Statement of Assurances
 - g. Signed Campaign Contribution Form
 - h. Signed Employee Health Coverage Form
 - i. Other Supporting Documentation (See APPENDIX L, if applicable)
Direct reference to pre-prepared or promotional material may be used if the Offeror believes they may improve the quality of their response. Such materials should be included as items in a separate appendix and referenced in the text of the response. Promotional material should be minimal.
 - j. Copy of Signed Acknowledgment of Receipt Form
 - k. Response to Contract Terms and Conditions
 - l. Offeror's Additional Terms and Conditions

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All reference to costs, rates or expenses are limited to the Cost Response Form to be included as a response to Factor III. (See Section IV).

2. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX B which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal **MUST**:

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization [if different than (2) above].
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.

5. Identify sub-contractors (if any) anticipated to be utilized in the performance of any resultant contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded contract.
7. Identify the following with a check mark and signature where required:
 - a. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. Acceptance of the Factors included in Section IV of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in Article 2 above.

IV. SPECIFICATIONS

All Offerors must be in good standing with the State of New Mexico.

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

A. DETAILED SCOPE OF WORK

Please review the attached Sample Contract (APPENDIX H) as well as the Scope of Work for the services to be proposed by the Offeror. For Service Coordination Scope of Work, see APPENDIX I. For Fiscal Intermediary Agent Services Scope of Work, see APPENDIX J.

B. INSTRUCTIONS FOR SUBMITTING RESPONSES TO FACTORS I, II, AND III FOR ALL SERVICES

All Offerors are required to respond to each of the numbered mandatory requirements in Section IV.C for Factors I, II and III. Please note that Factors I (A-D), II.A, II.C, and III are common factors for all respondents; only Factor II.B will include different specifications for SC and FIA services; these will be listed under separate headings.

The proposal should be as concise as possible but must include specifics that address **EACH** of the requirements, outcomes, activities and timelines detailed in this RFP section. **Offerors MUST number their responses to correspond with each numbered mandatory factor item.** The narratives along with required attachments will be evaluated and awarded points accordingly.

In summary, the response to Factor I should describe the Offeror's experience and expertise in serving individuals with brain injury and/or other disabilities; provide information on the organization's financial soundness; and reflect the Offeror's ability to function as a partner to HSD/MAD.

The purpose of Factor II is to describe the approach and practices to be employed by the Offeror, as well as expected results and benefits, and how results will be monitored, evaluated, and reported to the HSD. Factors for each service and activity are listed under separate headings for the two (2) service components included in Factor II.B.

The response to Factor III requires that Offerors complete the Cost Proposal / Budget section of the proposal as directed. Response to this factor must include the completed Budget Form, which can be found in APPENDIX G; this appendix also includes a table specifying the available funding.

Offerors of SC services may propose to provide the service in one or more regions, under the conditions that they maintain a physical presence in each of the proposed service regions and provide the proposed service throughout the service region as defined in APPENDIX F.

Offerors of FIA services must propose to provide the service statewide.

Points will be awarded based on the thoroughness and clarity of the response, its breadth and depth and the perceived validity of the response.

C. MANDATORY SPECIFICATIONS

Mandatory specifications are covered under Factors I, II, and III, as designated by numbered items in **bold**. Responses of all Offerors are to follow the numbered format in the sequence as outlined for all the factors below.

FACTOR 1: ADMINISTRATION AND PERFORMANCE (400 Points Total)

All Offerors should complete this Factor in narrative form, as it relates to their entire agency or organization.

FACTOR IA Organizational Experience and Performance (100 Points total)

Mandatory Requirements:

All Offerors must:

1. Describe their: (10 points)
 - a. Mission
 - b. Goals
 - c. Values
2. Include the organizational chart of the entire agency. Identify and include an explanation of the functions of staff pertaining to the execution of the scope of work detailed in this RFP, as it relates to the services proposed. (10 points)
3. Include names, job titles, job descriptions and qualifications of all key personnel who will be responsible for work on each proposed service program or project. If any such positions are not currently filled or individuals are not committed to these positions, the Offeror must provide the qualifications of the position.(9 points)
4. Include copies of resumes and appropriate professional certifications. (9 points)
5. Agree to employee direct service staff with the following minimum qualifications:
 - a. Have a Bachelor's Degree in: social work, counseling/behavioral health, nursing/therapy (PT, OT, SLP), special education, education or closely related field and one year's experience working with persons with disabilities, or no less than two years of experience working with a population similar to Brain Injury.
 - b. Have a current New Mexico professional license in good standing in one of the fields indicated above.
 - c. Have an education and/or experience exception from the HSD for persons with relevant education, internships, or volunteer experience. All exceptions must be in writing from the appropriate HSD representative.

- d. Have a prior written exception approval from HSD for any person providing services as an intern.
6. Agree to ensure that staff assigned to these projects possesses sufficient current knowledge of Brain Injury, resources available to the brain injury/disability communities, the requirements of this Scope of Work, as well as applicable State and Federal regulations.
7. Describe the agency's experience and success in working with similar programs, projects and/or populations. (10 points)
8. Specify the regions in which the agency proposes to deliver the services, provide information about their experience in delivering similar services in the proposed region(s), and describe how they will serve individuals living in rural areas of the proposed region(s). (10 points)
9. List the location, address and phone number for each service site or office; clearly indicate the counties served by that office; describe the major services provided at each site; and estimate the number of individuals expected to receive services at each site as it applies to Brain Injury provider services. (5 points)
10. Include evidence of compliance with previous contract requirements including contracts related to similar projects and/or service delivery experience. This may include, but is not limited to, compliance with project deliverables in past work, responsiveness to corrective action plans, timely submission of evaluations and reports. (10 points)
11. List any pending lawsuit or bankruptcy petitions, any lawsuit or bankruptcy that has been concluded within the last five (5) years, or any current investigation of the Offeror, its parent, affiliates, or subsidiaries, which may have bearing on the operation of the organization and the program in executing the Scope of Work, as proposed. Include a brief description of each item listed. (5 points)
12. Include in an appendix in the proposal response (a-e) (10 points)
 - a. A signed copy of the "Statement of Assurances Form", which can be found in APPENDIX C of this RFP.
 - b. Behind this form include the documents requested in APPENDIX C, Items A-G, and include corresponding sections and pagination in the Table of Contents.
 - c. With respect to Item B, Financial Status, the Offeror shall provide the company's most recently audited financial report, as well as those for the preceding three (3) years. Include the independent auditor's summary of findings for each report.
 - d. In addition, the Offeror is to provide the two most recent internally prepared quarterly financial statements with preparation dates indicated.
 - e. *For all the noted financial reports, include a notation of which financial audits were from an external vs. internal reviewer and precede each report with a brief descriptor to distinguish each statement.*
13. Agree to maintain required current business licenses.
14. Agree to maintain applicable professional liability insurance coverage.
15. Agree to have, or be willing to obtain, a current New Mexico tax identification number from the New Mexico Taxation and Revenue Department.
16. Agree, if selected as a finalist, to provide the Evaluation Committee an opportunity to interview key project personnel to hear the finalist's oral presentation of their proposal, ask finalist questions and seek clarifications. (Oral presentations may be requested at the recommendation of the Evaluation Committee.)

FACTOR IB. Project Specific Administrative Responsibilities (100 Points total)**Mandatory Requirements:****All Offerors must:**

17. Agree to coordinate, as necessary, with HSD/MAD's Brain Injury Program and other Program Contractors on the implementation of service components.
18. Agree to attend and participate in Brain Injury Service Fund Program provider trainings, BISF Operations Meetings, and *ad hoc* conference calls and meetings as requested by HSD/MAD, and to provide input on issues as requested.
19. Agree to be available to participate and respond to requests for information and audit activities as requested.
20. Describe the Offeror's internal compliance program to assist the HSD/MAD in any future audit activities. (32 points)
21. Agree to be responsive, and respond in a timely manner, to the State, HSD/MAD and its Brain Injury Program.
22. Assure HSD that detailed records indicating contracts with participants will be maintained and available for inspection by HSD, DFA, and the State Auditor. HSD has the right to audit billing and payments and to contest billing or portions thereof. Payment paid pursuant to a contract with the Offeror shall not forfeit the right of HSD to recover excessive payments or those billed illegally by the Offeror.
23. Assure HSD that any confidential information provided in the performance of the Scope(s) of Work detailed in this RFP shall not be made available to any individual or organization without prior written approval by HSD.
24. Agree to employ or contract and train BISF Program service-appropriate staff that meets the HSD BI Program regulation requirements.
25. Agree to notify the HSD if changes occur related to key project personnel and/or regional staff that are needed to support the contracted service. The HSD reserves the right to review contract status if key personnel (as defined in the Scope of Work for SC service) change or if regional staff needed to support enrolled participants is insufficient.
26. Agree to maintain a current directory of local, regional, state and national Brain Injury resources for use by staff and participants and regularly update resources with the NM Brain Injury Resource Center, upon their request.
27. Agree to retain files for participants transitioned to an inactive status indefinitely, until 6 years after the participant moves out of state; expires; or has transitioned to Medicaid Managed Care. The offeror understands that file retention for individuals with brain injury facilitates expedient reactivation upon renewed crisis.
28. Describe the offeror's automated data collecting and reporting system to be employed for the purpose of meeting scope of work requirements. (32 points)
29. Agree to submit monthly reports to HSD regarding participant enrollments, disenrollments census and individual participant costs, as applicable,
30. Agree to submit detailed quarterly reports, to include but not be limited to participant demographic information as specified by the HSD, as well as other reports to HSD, as requested.

31. Agree to have written billing policies and procedures and a system that will allow the provider to bill according to the HSD Unit Billing requirements. Such written policies and procedures shall assure that no person will be denied services because of their inability to pay.
32. Agree to not bill BISF participants for BISF Program services or duplicate services provided by other State General Funding or other BISF contracted providers.
33. Agree to not bill the BISF Program for duplicative services billed to another payer source.
34. Agree to bill the HSD based on a per-unit basis for all services and in monthly increments which cumulatively do not exceed the total yearly contract, unless requested in writing and followed by written approval of the Brain Injury Program Manager.
35. Agree to reimburse entities with which they conduct program business in a timely manner.
36. Agree to maintain separate accounting activities for the BISF Program and in accordance with all other State requirements.

FACTOR IC. Quality Assurance and Program Integrity

(100 Points total)

Mandatory Requirements:

All Offerors must:

37. Assure HSD that the Offeror is committed to a high quality of service.
38. Agree to abide by all Federal and State laws, rules, regulations and executive order of the Governor of the State of New Mexico that pertain to equal opportunity. Pursuant to all such laws, rules, regulations, and executive orders, the Offeror must assure HSD that no New Mexico citizen shall be denied the benefit of any activity performed under a contract awarded based on this RFP or be otherwise subjected to discrimination on the grounds of race, color, national origin, gender, sexual orientation/identity, age, disability or religion.
39. Agree to comply with all applicable New Mexico HSD and Medicaid Rules, Regulations, Standards and Policies, including but not limited to the TBI Regulations 8.326.10 NMAC and any newly amended brain injury regulations, Standard Operating Procedures, and Letters of Direction; 7 NMAC 26 (Parts 3-8); 7 NMAC 30 (Part 8); and applicable sections of the Medical Assistance Division (MAD) Medicaid Program Manual for Medicaid EPSDT services. The BISF Program regulations can be found at <http://www.hsd.state.nm.us/LookingForInformation/overview-1.aspx>.
40. Agree to comply with all applicable Federal regulations.
41. Agree to comply with the New Mexico Human Services Department Brain Injury Services Fund Program Definitions as they pertain to the development, implementation and interaction of contracted service components.
42. Agree to provide proof of all current appropriate licenses and/or accreditation certifications that apply to the proposed service or project.
43. Agree to maintain complete records of all subcontract information including current licensure, accreditation, staff identification and qualifications.

44. Agree to comply with all state and federal confidentiality and Health Insurance Portability and Accountability Act (HIPAA) laws.
45. Agree to ensure that all agency sites are barrier free and comply with accessibility standards of the Americans with Disabilities Act (ADA).
46. Agree to have a governing board whose membership is generally representative of the population of the community served, including at least one person living with brain injury/disability.
47. Agree to establish and maintain a written quality assurance policy and system that adheres to TBI/BI Program regulations to be provided to HSD in the first contract year. (5 points)
48. Include evidence of Quality Assurance survey results conducted by other entities. (25 points)
49. Include evidence of other quality indicators of providing high quality services for the target or similar population. (25 points)
50. Include agency evidence of organization Quality Assurance and/or Continuous Quality Improvement program for services. (25 points)

FACTOR ID. References

(100 Points total)

Offeror is required to see APPENDIX K "Reference Questionnaire" for instructions pertaining to the provision of the requested references, which shall be submitted **directly by** the referring client to the HSD Procurement Manager. Points will be awarded based on evaluation of the responses to a series of questions that will be asked concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints and the level of satisfaction with the Offeror's overall performance.

Mandatory Requirements:**All Offerors must:**

51. Arrange for three (3) external corporate reference questionnaires to be completed by clients, who have received similar services to those proposed for this contract, and as possible for projects in the public sector that have occurred within the past five (5) years.

If the Offeror has provided contractual services for the Brain Injury Services Fund Program for eight (8) or more consecutive years, then only two (2) external corporate references are required.

If the Offeror proposes to use subcontractors for significant portions of the Scope of Work, the Offeror shall provide an additional three (3) external Reference Questionnaires for each major subcontractor, if applicable. Each reference must include the name of the company, company current address, name of the contact person, telephone number, email address, relationship to the Offeror and the date and description of the services provided.

It is the Offeror's responsibility to ensure the forms completed by the Offeror's references are received by the Procurement Manager on or before the proposal submission deadline for inclusion in the evaluation process.

Organizational References that are not received, or are incomplete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted.

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

NOTE TO OFFERORS: As part of the proposal response to this factor, Offerors shall submit the following Business Reference information for each external reference anticipated to provide a reference:

- a) Client project manager name, telephone number, fax number and e-mail address;
- b) Project description;
- c) Project dates (starting and ending);

Reference letters may be submitted in a separate appendix of the proposal response, but the Reference Questionnaires will be required as part of the response to this factor.

FACTOR II: Brain Injury Services and Scopes of Work (300 Points total)

Service Component Descriptions and Scopes of Work

Service Coordination and Fiscal Intermediary Agent Services are discrete but interdependent and interacting services. Although each Offeror is limited to the provision of one (1) service through the BISF Program, Offerors are encouraged to understand the functions of other BISF service Components. (Factors follow descriptions.)

1. Service Coordination (SC)

A sample contract can be located in APPENDIX H. The Service Coordination Provider Scope of Work can be located in APPENDIX I.

- a. *Service Coordination (SC) services* are intended to be short-term services that include, but are not limited to assessing, planning, coordinating, customizing, and monitoring participant home and community-based services funded by HSD's BISF Program. Service Coordinators are expected to problem-solve, ensure continuity, prevent fragmentation of services and endeavor to tap into any and all resources that are appropriate and accessible, including community-based supports, while resolving the crisis that brought the participant into the program. Services provided are NOT long-term case management services. Rather, the services provided are expected to enhance the participant's self-care and self-determination, promote independence from the program, promote independent functioning in the home and community, and encourage optimal individual and family participation. All participants must have a BISF Program Service Coordinator before they can receive any other BISF Program Services. Depending on assessed needs, Service Coordinators will file referrals for BISF HCBS, including professional Life Skills Coaching, for individual program participants with the BISF Fiscal Intermediary Agent, who will arrange for and pay for needed goods and services through its specialized network of brain injury providers. SCs are also responsible for monitoring progress and outcomes related to all BISF HCBS, including professional Life Skills Coaching.

Selected contractors for the Service Coordination component are expected to be professional social workers with training and experience in brain injury and behavioral

health issues per the Program's regulatory requirements (8.326.10.10.D NMAC) regarding staff qualifications. The SC service is intended to more efficiently resolve participant crises by reducing the stress participants face in managing multiple case workers and appointments, in their efforts toward greater independence. The SC agency is also expected to follow-up on and manage critical incidents involving participants, as they are reported to HSD.

- b. *Service Coordination Scope of Services* - Service Coordination is used to assist individuals with gaining access to social, educational, medical, and other appropriate services that are home and community-based. Service Coordination responsibilities include, but are not limited to:
1. Determining eligibility of participants to receive BISF Program services. This includes assisting them in gathering documentation of their brain injury ICD10 code and other medical documentation, completing the program application and assisting with other related application requirements;
 2. Formal assessment of participant needs using instruments approved by the HSD;
 3. Identifying appropriate programs to meet the individual's needs and making appropriate referrals;
 4. Making referrals for BISF HCBS as payer of last resort for assessed needs while other payer sources are sought and until the services become active under the new payer source, or the crisis is otherwise resolved.
 5. Monthly face-to-face meetings with participants;
 6. Coordinating and assisting with applications and transition to other services and programs.
- c. *Intent of Service Coordination* - Service Coordination is intended to be provided on a short-term basis to resolve an identified crisis, including but not limited to lack of health insurance, homelessness, loss of employment or income, insufficient finances, or loss of natural supports. It is intended to augment, not replace the individual's natural supports, while assisting the individual in identifying and connecting with new supports.
- d. *Service Coordination Focus* - Service Coordination focuses on supports that are natural and appropriately non-obtrusive. It is intended to nurture individuality in the person's environment, and to use every means possible to allow the participant to live in their own home and/or community.
- e. *Entry into the BISF Program and Referral of Services*- Service Coordination is the entry point into the BISF Program. Only after eligibility status has been determined does the Service Coordinator initiate the face-to-face in-home Service Coordination assessment. Referrals for BISF HCBS, including professional Life Skills Coaching, will ensue only after the SC assessment has been completed and the ILP has been developed.
- f. *Service Coordination, Frequency of Contact* - All Service Coordinators are required to conduct a minimum of one-hour face-to-face sessions with their participants monthly. Initial assessment shall be conducted face-to-face, but after initial services have been established, participants living over 150 miles round-trip from their Service Coordinator's agency, may have less frequent face-to-face sessions, if Service Coordination can be provided over the telephone or by Skype. The deviation

from face-to-face contact and reduced frequency shall be justified in a written request to HSD and documented in the participant's ILP, following HSD's written approval.

- g. *Sole Provision of Service Coordination* – Agencies contracted to provide Service Coordination shall only provide service coordination in the execution of their contracted scope of work. Service Coordination agencies cannot provide FIA services, professional Life Skills Coaching or any other BISF HCBS in the execution of their contract.
- h. *Limited Service Coordination* - Participants on limited Service Coordination are those that are still receiving BISF HCBS, including professional Life Skills Coaching, to resolve an ongoing crisis, but who no longer need intense Service Coordination. Participants receiving limited Service Coordination must be contacted no less than once per month on the telephone and no less than once per quarter face-to-face.
- i. *Service Coordination Discharge* – Service Coordination must be terminated upon identification of another payer source for a service assessed as a need, reaching ILP goals in resolution of the identified crisis, or in the event that the participant does not fulfill participant responsibilities.
- j. *Service Coordination Reimbursement*— Reimbursement for BISF SC services under contract with the Department shall be done through a per service Unit Rate as described below:
 1. Unit Rate for applicant or reactivating participant status = \$140 per applicant (presenting with a crisis need) per month for direct contact with participants either face-to-face or by telephone and/or other work directly related to determination of BISF Program eligibility.
 2. Unit Rate for approved Program participants = \$210 per approved participant per month for direct contact with participants either face-to-face or by telephone and/or other work directly related to coordination of services.
 3. Reimbursement at the noted rates will cover all hours of service provided and related administrative and indirect costs.
 4. Payment for BISF SC will be made only as funds are available and per Legislative appropriation.

2. Fiscal Intermediary Agent (FIA) BISF Services

A sample contract can be located in APPENDIX H. The Fiscal Intermediary Agent Services Scope of Work can be located in APPENDIX J.

- a. *Fiscal Intermediary Agent (FIA) Services* for the arrangement of BISF HCBS require the professional services of an agency experienced in professional fiscal management with the capacity to develop and manage a specialized network of brain injury healthcare and other providers and per the Program's regulatory requirements (8.326.10.14.B NMAC) regarding staff qualifications. The FIA for these services is expected have sufficient knowledge of brain injury to be able to educate HCBS vendors about the brain injury specific needs of enrolled participants in working

through any service delivery issues and respond to critical incidents that concern the brain injury participant's BISF HCBS.

These services include all of the "crisis interim" or BISF HCBS listed in the TBI regulations (8.326.10.13 NMAC), but also include professional Life Skills Coaching. BISF HCBS are short-term services that can be accessed upon referral by a BISF SC to resolve a crisis need that is directly related to the individual's brain injury. Services may be provided following a participant's initial brain injury; whenever there has been a sudden change in their medical, psychological or physical condition; or in the event that a new crisis has arisen. BISF FIA services are only accessible through the coordination of a BISF Program Service Coordination agency and are limited to filling a participant's needs, when there is an imminent risk to the participant's health and safety. Funds may be used to pay for the services and goods that have been formally assessed as a need by BISF Service Coordinators. Payment for BISF HCBS services and goods is only available in the event that another payer source cannot be identified.

- b. *Functional role of the Fiscal Intermediary Agent (FIA)*- The FIA is responsible for the arrangement of BISF HCBS contracts and agreements with service providers, who will be engaged to resolve a participant's brain injury related crisis. The FIA is also responsible for the payment of goods and services that have been identified to resolve a crisis need and according to participant needs will have the capacity to educate vendors about the individual's brain injury related needs and respond to critical incidents that concern the brain injury participant's BISF HCBS.
- c. *Provision of BISF HCBS* – Brain Injury related services are provided through referral by a BISF Service Coordinator in accordance with documentation on the participant's Independent Living Plan (ILP) and as specified by a licensed or certified direct service provider or vendor of goods. BISF HCBS includes:
 - 1. Homecare / nursing—aides, homemaker or companion, nursing
 - 2. Therapies—occupational, physical, speech
 - 3. Physician Services – copays
 - 4. Alternative therapies – massage, acupuncture, chiropractic
 - 5. Transportation to receive brain injury related medical care / therapies
 - 6. Respite services for primary care giver
 - 7. Outpatient mental health / psychotherapy
 - 8. Prescription medications related to a participant's brain injury
 - 9. Professional Life Skills Coaching services
 - 10. Assistive technology—assessments and equipment
 - 11. Initial or emergency housing/utility assistance
 - 12. Retrofit of an automobile
 - 13. Environmental modifications (up to \$10,000 in a lifetime)
 - 14. Other BI specific services: Special training, Neuropsychological Evaluations, dietary items, etc.
- d. *Limits* – Each participant, according to assessed needs, is eligible to receive up to \$4,250 in BISF HCBS each year, unless approved by exception in writing by the HSD BISF Program Manager. BISF HCBS funds are limited to a lifetime maximum of \$75,000 per participant. Services and/or delivery of products are limited to 90 days, unless justified in the participant's independent living plan (ILP). Cumulative service documentation must be kept in the participant's file.

- e. *File Documentation* – All participant files must contain documentation of ICD-10 codes as proof of eligibility; a copy of each participant’s application (pages 1 & 2); and current ILP, all to be provided by the BISF Service Coordinator.
- f. *Coordination of Services*- Services must be coordinated through a BISF Program Service Coordination agency under contract with the Department.
- g. *Sole Provision of BISF HCBS* – The FIA shall provide only the services outlined in the contract scope of work, which must be provided statewide. The BISF FIA cannot provide Service Coordination, professional Life Skills Coaching or any other Home and Community Based Service in the execution of their contract.
- h. *Vendor Reimbursement* - The FIA is responsible for reimbursement to the vendor, service provider, participant, or family in accordance with the ILP and approved service referrals and as funding allows. HSD will reimburse the FIA for contract related activities on behalf of enrolled participants based on a monthly 1/12 draw-down, regardless of the number of persons served.
- i. *One Unit Rate for HCBS* = \$ 1.00 per Unit. No more than 4,250 Units may be spent on a single participant with a brain injury during one (1) contract year, unless through a written approved exception submitted in writing to HSD. No more than 75,000 Units may be spent on a single participant with a brain injury throughout the participant’s lifetime. Rates for reimbursement should be consistent with Human Services Department Medicaid rates, unless otherwise approved in writing by HSD. All payments for services or goods must be tracked in accordance with reporting requirements, noted in “j” below.
- j. *Monthly, Quarterly and Cumulative Reports* –
Monthly reports are required for each participant in each billing cycle and shall include participant identifiers, itemized billing, and total amount billed in the designated period.

Detailed quarterly reports are required for each participant and shall include participant identifiers; services and/or goods received; service dates; and expended funds for each service date; and cumulative expenditures for the current fiscal year.

Cumulative participant expenditures for all fiscal years while the participant has been in the program and provided to HSD on a quarterly basis.

Reports, as scheduled above, should be provided to HSD with the monthly billing. Itemized billing reports will also be provided to the appropriate Service Coordinator agencies for the purpose of expenditure tracking and be made available to the participant or his/her representative upon request.

Reports Upon Request - The contracted provider should have the capacity to provide HSD a current detailed report of all fiscal activities to date within 3-business days.

FACTOR II-A General Requirements (All Offerors) (100 points total)

General Requirements for all Offerors proposing to provide BISF services (SC or FIA). All Offerors submitting a proposal **must** agree to abide by the following guidelines and incorporate them into the proposal.

Mandatory Requirements:**All Offerors must:**

52. Agree to provide **ONLY ONE** home and community-based short-term service, which may include 1) Service Coordination or 2) Fiscal Intermediary Agent services on behalf of enrolled BISF Program participants.
53. Agree to provide the proposed service throughout the entire geographical region, including all counties, as identified in their proposal, or statewide, as applicable.
54. Agree to ensure that Service Coordination is the single point of entry for all BISF Program services.
55. Agree to not begin providing BISF Program services, until an application has been processed through the participant's Service Coordinator and the individual has been determined to meet Program eligibility requirements. Pre-eligibility assistance may be given by SCs to assist in the acquisition of ICD-10 codes to confirm the diagnosis of brain injury.
56. Agree to maintain a comprehensive master file or case record on each BISF participant to include at a minimum the contractually required documents and those indicated in the TBI Regulations 8.326.10 NMAC, amended regulations, or as directed by HSD.
57. Agree to collaborate productively with other contracted BISF entities as they provide services for participants and follow established communication protocols.
58. Agree to assess participant services at a quarterly minimum using instruments and/or processes designated by HSD, ensuring service continuity for those deemed eligible to continue for an additional 90-day interim. For SC purposes, quarterly meetings shall be held for reassessment and quality assurance purposes and shall include the participant or his/her representative whenever possible.
59. Agree to transition BISF participants to an inactive status promptly when the participant either begins to receive services through other payer sources, the crisis need has been resolved, when the BISF Program services are no longer needed or appropriate, or in the event the participant does not fulfill participant responsibilities.
60. Agree to provide services according to the contract allocation amounts projected at the per unit rates detailed in APPENDIX G - Funding Table, according to service category and/or region.
61. Agree to provide services to participants before Offeror bills HSD for services rendered.

FACTOR II-B Service Component Specific Requirements (100 points total)

All Offerors submitting a proposal to provide BISF services must also agree to the additional guidelines listed below and incorporate them into the proposal. Each Offeror must respond for the provision of only ONE (1) service component: 1) Service Coordination (SC) or 2) Fiscal Intermediary Agent Services (FIA). Although each Offeror is limited to the provision of ONE (1) service on behalf of the BISF Program, Offerors are encouraged to understand the functions of other BISF service Components, since project activities require that the components interface and collaborate on behalf of the Program and its participants.

1. Service Coordination (SC) (100pts)

Mandatory Requirements: (Items 62-81)

All SC Offerors must:

62. Acknowledge that the Sample Scope of Work for Service Services, as outlined in APPENDIX I, has been read and understood.
63. Agree to maintain an accessible physical office in each BISF Program region in which they provide services.
64. Agree to implement the eligibility requirements to qualify for BISF Program services.
65. Agree to avoid duplication of services, meaning that those served by other programs, systems or payer sources are not eligible to receive services from the BISF Program, unless an exception has been made by HSD or unless the individual is transitioning out of institutional care to home and community-based care within 30 days.
66. Agree to discharge enrolled participants in accordance with Factor II, 1(g) and (i).
67. Acknowledge that the BISF is not an Entitlement Program and serves as the Payer of Last Resort. Other programs or systems, including but not limited to Medicare, Medicaid Centennial Care and other Medical Assistance Programs, such as the Medicaid Mi Via Waiver, the Medicaid Developmental Disability Waiver, the Medicaid Medically Fragile Waiver, the Family Infant Toddler program, Indian Health Services, and private insurances, are the first payers. BISF Program participants may receive assistance from program Service Coordinators, while they are making application for other programs or payer sources and during their transition to such programs/payer sources.
68. Agree to retain Behavioral/Mental Health Therapists, as needed. Such staff should be available to assist with emergency needs related to participants and staff consultations.
69. Agree to assess the needs of the individual as they apply to Service Coordination and BISF HCBS, listed under Factor II.2.c, prior to the provision of the respective services, using instruments approved by HSD.
70. Agree to develop, write, implement and maintain an Independent Living Plan (ILP) for each participant to include at a minimum the Service Coordination Independent Living Plan (SC-ILP). Each ILP shall be written to include all assessed needs with details on payer sources. These will include any services assessed as a need that are listed in the TBI Program services regulations 8.326.10.13 NMAC and Factor II.2.c. SCs are responsible for monitoring the progress and outcomes of all BISF HCBS referred through the BISF FIA-contracted vendor. ILPs shall be written only after the respective assessments have been completed.
71. Agree to refer participants to outside payer sources, as they are available.
72. Agree to make referrals for BISF HCBS, as payer of last resort, for assessed needs while other payer sources are sought and until the services become active under the new payer source, or the crisis is otherwise resolved.
73. Agree to submit referrals for BISF HCBS, as has been defined in this RFP, to the BISF FIA for only the services and goods which have been identified as a need through an SC assessment and as documented on a participant's ILP.
74. Agree to reassess participant's needs every 90 days to ensure that the services the individual is receiving continue to be appropriate. Reassessments for Service

Coordination and progress regarding any BISF HCBS are to be independently reviewed and recorded in writing, utilizing 90-day Narrative Reviews, which are retained in the participant's files.

75. Agree to create and follow a Discharge/Transition Plan for eventual participant inactive status from the BISF Program as part of each ILP. Transition planning is to be recorded and updated in the individual's file in writing at least quarterly
76. Agree to create and follow a detailed plan for transitioning participants currently being serviced by another provider *INTO* BISF services. Likewise, the Offeror agrees to create and follow a detailed plan for transitioning participants into Medicaid Managed Care or other non-BISF funded programs or payer sources, as such options become available.
77. Agree to maintain a written grievance and incidence reporting procedure for BISF participants and hired staff. Policies should be reviewed and signed by the participant and/or their guardian upon intake. Policies and procedures will include notification of participant appeal rights and notify participants of their right to contact HSD at any time. Agree to follow the written HSD policies and procedures regarding grievances and appeals.
78. Agree to maintain a current waiting list for the purpose of tracking *applicants* who have a crisis need and are awaiting an eligibility determination.
79. Agree to maintain a 24-hour emergency response system that allows participants to contact them. An emergency response written policy should be provided to all participants and be available for review by HSD upon request.
80. Agree to maintain full-time staff to fulfill the caseload needs of the region in which the agency provides service using a suggested staff / participant ratio of no more than 1:30 for Service Coordinators.
81. Agree to bill HSD in accordance with Per Member Per Month rates in accordance with applicant or approved participant status.

2. Fiscal Intermediary Agent Services (FIA)

(100 points)

Mandatory Requirements: (Items 62-71)

All CIS Offerors must:

62. Acknowledge that the Sample Scope of Work for Fiscal Intermediary Agent (FIA) Services as outlined in APPENDIX J, has been read and understood.
63. Agree to maintain an accessible physical office from which to operate and provide statewide BISF Program services.
64. Agree to avoid duplication of services, meaning that those served by other programs or systems are not eligible to receive services from the BISF Program, unless an exception has been made by HSD or unless the individual is transitioning out of institutional care to home and community-based care. Agree to provide only BISF HCBS in the execution of their contracted scope of work, which must be provided statewide. The FIA cannot directly provide Service Coordination, professional Life Skills Coaching or any other Home and Community Based Service in the execution of their contract.
65. Agree to accept referrals from BISF Service Coordinators which include only the services and goods which have been identified as a need, as documented on a participant's ILP.

66. Agree to timely implementation of new services and timely recertification and continuation of existing services for program participants, taking all measures to avoid service delays or disruption of existing services.
 67. Acknowledge that the BISF is not an Entitlement Program and serves as the Payer of Last Resort. Other programs or systems, including but not limited to Medicare, Medicaid Centennial Care and other Medical Assistance Programs, such as the Medicaid Mi Via Waiver, the Medicaid Developmental Disability Waiver, the Medicaid Medically Fragile Waiver, the Family Infant Toddler program, Indian Health Services, and private insurances, are the first payers. BISF Program participants may receive assistance from program Service Coordinators, while they are making application for the programs listed above and transitioning to these or other payer sources.
 68. Agree to follow a Discharge/Transition Plan for eventual participant inactive status from the BISF Program as part of each SC-ILP, as indicated on the most recent quarterly SC-ILP.
 69. Agree to maintain a case record on each BISF participant to include at a minimum the participant's ICD-10 code; first two (2) pages of application; Release of Information; any appropriate releases of liability; Physicians orders, as applicable; ILPs on which services were based; service agreements; and billing records.
 70. Agree to maintain a written grievance and incidence reporting procedure for BISF participants. Policies and procedures will include notification of participant appeal rights. Agree to follow the written HSD policies and procedures regarding grievances and appeals.
 71. Agree to maintain a 24-hour emergency response system that allows service providers working with the BISF to contact the FIA. An emergency response written policy should be available for review by HSD upon request.
- NOTE: Offerors of Crisis Interim Fiscal Intermediary Services continue to Factor II.C, Item 82.**

FACTOR II-C Evaluation of Proposed Services (100 points total)

Ongoing quality assurance and program integrity are required of all Offerors of Brain Injury home and community-based services, including 1) Service Coordination and 2) Fiscal Intermediary Agent services.

Mandatory Requirements:

All Offerors must:

82. Provide a narrative describing how the Offeror will evaluate the proposed service and report evaluations to the HSD. Copies of satisfaction surveys or evaluation tools should be included. The following elements are to be incorporated into the Offeror's evaluation methodology:
 - a. Description of measurable indicators of quality of services provided.
 - b. Criteria for success that an outcome has been accomplished.
 - c. Description of methodology to determine the extent to which outcomes are met.
 - d. Description of the methods for gathering data.
 - e. Description of the process of data analysis.
 - f. Evaluation of accomplishments and degree to which outcomes are met.
 - g. Method(s) and timeline for modifying methods and strategies as a result of evaluation.

FACTOR III**Budget****(300 Points total)**

All Offerors **must** complete the Cost Response Form located in APPENDIX G. All reimbursement will be based on unit billing. Responses to this section will be considered in terms of the Funding Request offer against available funding; the projected number of participants projected to be served with available funding; and other sources of funding currently supporting the Offeror’s organization.

General Requirements:

- A. Funding Sources - Funding exists for individuals with Brain Injuries through direct appropriations from the Brain Injury Services Fund (BISF), by means of \$5.00 fees attached to all New Mexico traffic tickets. Appropriation totals for contracts are dependent on revenues and fund balances entrusted to the Brain Injury Service Fund as well as appropriation by the Legislature.
- B. Funding available for each BISF service per region for FY20 can be located in the “BISF Funding Table FY20” in APPENDIX G.
- C. Unit Billing- Service Coordination– See Factor II.B.1 (Description, Item I).
- D. Unit Billing- Fiscal Intermediary Agent Services – See Factor II.B.2 (Description, Item i).

Mandatory Specifications:**All Offerors must:**

- 83.** Include a completed Budget table (see APPENDIX G for blank form). Specify the information required in the “BISF Service Component Funding Request” in addition to other funding the agency is currently receiving. (Any proposal that includes a funding table, where Administrative Costs are noted as “N/A” or left blank is subject to a reduction in awarded points).

Desirable Specifications: (for additional consideration of most advantageous award)**The Offeror may include:**

- 84.** Information on the ability to provide the services statewide.
- 85.** Information on indirect and in-kind-operating costs.
- 86.** Information about credentialing of staff (or intent to credential staff) through the Brain Injury Association of America as a Certified Brain Injury Specialists (CBIS) is advantageous, as it reflects an individual’s commitment to remaining current in the latest brain injury research, treatment and practices. The organization may include copies of any staff CBIS certificates in Appendix M of the agency’s proposal response.

D. BUSINESS SPECIFICATIONS

(Items 1-7, as noted, are to be provided by all Offerors. Pass/Fail only. No points assigned.)

1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form in APPENDIX B. The form must be completed and **must** be signed by the person authorized to obligate the company.

2. Financial Stability

See Section IV.C., Factor 1A, Item 12 and APPENDIX C for supporting Statement of Assurances and required documentation. Offerors must submit copies of the most recent years independently audited financial statements, 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) to enable the Evaluation Committee to assess the financial stability of the Offeror.

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 D)

4. Employee Health Coverage Form

The Offeror must agree with the terms as indicated in APPENDIX E. The unaltered form must be completed, signed by the person authorized to obligate the Offeror's firm and submitted with Offeror's proposal.

5. Pay Equity Reporting

The Offeror must agree with the requirements of reporting as defined in Section II.C.30. Report is due at the time of contract award. A statement of concurrence with this requirement must be included in Offeror's submitted proposal. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local Contractor. However, such out-of-state Offerors must still submit a statement of concurrence that reads as follows: "Offeror concurs with the Pay Equity Reporting as defined in Section II.C.30. Offeror would come under the definition of out-of-state Contractor if Offeror should be successful."

6. Resident Business or Resident Veterans Preference (If applicable)

To ensure adequate consideration and application of 13-1-21 NMSA (as amended), Offerors desiring consideration of Veterans status must include a copy of their preference certificate in this section. In addition, for resident Veterans Preference, the attached certification Form (APPENDIX L) must accompany any Offer and any business wishing to receive the preference must complete and sign the form.

E. DESIRABLE SPECIFICATIONS

Credentialing of staff through the Brain Injury Association of America as a Certified Brain Injury Specialists (CBIS) is advantageous, as it reflects an individual's commitment to remaining current in the latest brain injury research, treatment and

practices. Offerors with staff who have received the full CBIS credential are eligible to receive an additional **25 points** to their overall proposal score. In order to be considered for the additional award of points, the organization should include copies of any staff CBIS certificates in APPENDIX M of the agency's proposal response.

V. EVALUATION OF PROPOSALS

A. EVALUATION PROCESS

1. HSD will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated in 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. The HSD shall appoint an Evaluation Committee, which shall evaluate each responsive proposal on the basis of its technical and business merit. HSD reserves the right to use technical advisors in this process.
4. The Evaluation Committee may include other sources of information to perform the evaluation as specified in Section II. C.18.
5. Responsive proposals will be evaluated based on the responses to the Factors set forth in Section IV, which have been assigned maximum point values as summarized in Section V, Letter B. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
6. Upon basis of the responsive proposals submitted, Offerors with the highest scores will be selected as finalist Offerors.
7. Finalist Offerors, who are asked or choose to submit revised proposals for the purpose of obtaining Best and Final Offers, will have their points recalculated, accordingly.
8. The Evaluation Committee may request that the finalists, who have been identified for a specific service component, provide an oral presentation of their proposal. The Evaluation Committee may use some of that time to ask finalist questions and seek clarification for the assessment of the most advantageous offer. The most advantageous offer may be based on the quality and organization of information presented; how effectively the information was communicated; the professionalism of the presenters; the technical knowledge of the proposed staff; and clarifications regarding the proposal response. Prior to any Oral Presentation, the HSD will provide the Offeror with a presentation agenda. No additional points will be awarded, but points may be reassigned on the basis of presentations. A statement of concurrence must be submitted in the Offeror's proposal as part of Factor II.B.
9. The responsive Offerors whose proposals are most advantageous to the State, taking into consideration the evaluation factors in Section IV, will be recommended for award (as specified in Section II. B.12). The most advantageous offer may not be the Offeror with the highest score.

B. EVALUATION POINT SUMMARY

The following is a summary of Section IV specifications for RFP # 19-630-8000-0001, identifying points assigned to each factor. These weighed factors will be used in the evaluation of individual Offeror proposals.

TECHNICAL SPECIFICATIONS		
RFP SECTION	FACTOR MANDATORY SPECIFICATIONS	POINTS (available)
IV.C.1	FACTOR I: ADMINISTRATION AND PERFORMANCE	400
	Factor 1A: Organizational Experience and Performance	100
	Factor 1B: Program Specific Administrative Responsibilities	100
	Factor 1C: Quality Assurance and Program Integrity	100
	Factor 1D: Organizational References	100
IV.C.2	FACTOR II: BRAIN INJURY SERVICES	300
	Factor 2A: General Requirements	100
	Factor 2B: Component-Specific Requirements	100
	Factor 2C: Evaluation of Proposed Services	100
IV.C.3	FACTOR III: COST PROPOSAL/BUDGET	300
IV.D BUSINESS SPECIFICATIONS		
RFP SECTION		
Appendix B	Letter of Transmittal	Pass/Fail
Appendix C	Financial Stability (per documentation on Statement of Assurances Form) All documents ensuing from response to Statement of Assurances.	Pass/Fail
Appendix D	Campaign Contribution Disclosure Form	Pass/Fail
Appendix E	Employee Health Coverage Form	Pass/Fail
Appendix C	See Pay Equity Reporting	Pass/Fail
Appendix L	Resident Business or Resident Veterans Preference (as applicable)	Pass/Fail
IV.E DESIRABLE SPECIFICATIONS		
Appendix M	Certified Brain Injury Specialist (CBIS) Certification (1 or more staff certifications)	25 Bonus Points
TOTAL AVAILABLE POINTS		1,025

APPENDIX A**ACKNOWLEDGEMENT OF RECEIPT FORM
Request for Proposals****Brain Injury Services – RFP # 19-630-8000-0001**

In acknowledgement of receipt of this Request for Proposals (RFP), the undersigned agrees that he/she has received a complete copy, beginning with the title page and Table of Contents, and ending with APPENDIX L.

The Acknowledgement of Receipt should be signed and returned to the Procurement Manager no later than Close of Business on **as stated in Section II, A. SEQUENCE OF EVENTS**. Only Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the Agency's written responses to those questions, as well as RFP amendments, if any are issued. Offerors are responsible for tracking the NM Human Services Department website for amendments to this RFP and related information. A copy of this signed and dated form shall also be included in the appendix of the offeror's response.

Firm:

Represented by: _____

Title: _____ **Phone Number:** _____

E-Mail: _____ **Fax Number:** _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

SIGNATURE: _____ **DATE:** _____

The name and address indicated above will be used for all correspondence related to this RFP.

Firm does / does not (circle one) intend to respond to this Request for Proposals.

<u>RETURN THIS FORM TO:</u>	Attn: Linda Gillet, Procurement Manager RFP # 19-630-8000-0001 (Brain Injury Services) HSD/MAD/ESPB
US MAIL:	P.O. Box 2348, Santa Fe, NM 87504-2348
HAND DELIVERY:	2025 S. Pacheco, Ark Plaza, Santa Fe, 87505
EMAIL:	LindaB.Gillet@state.nm.us

APPENDIX B

LETTER OF TRANSMITTAL FORM

New Mexico Human Services Department
Brain Injury Services Program, RFP # 19-630-8000-0001

PLEASE PRINT: All items must be completed in full. Failure to respond to all items WILL result in disqualification of the proposal.

Offeror (Agency) Name: _____ **Tax ID Number** _____

1. Identity (Name) and Mailing Address of the submitting organization:

2. The person authorized by the organization to contractually obligate on behalf of this Offer:

Name _____
Title _____
E-Mail Address _____ Telephone Number _____

3. The person authorized by the organization to negotiate on behalf of this Offer:

Name _____
Title _____
E-Mail Address _____ Telephone Number _____

4. The person authorized by the organization to clarify/respond to queries regarding this Offer:

Name _____
Title _____
E-Mail Address _____ Telephone Number _____

5. Use of Sub-Contractors (Select one)

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

(Attach extra sheets, as needed)

6. Please describe any relationship with any entity [other than Subcontractors listed in (5) above] which will be used in the performance of any resultant contract.

(Attach extra sheets, as needed)

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

The Offeror certifies that, to the best of his/her knowledge and belief, the data in this proposal are true and correct.

Print _____ Signature _____
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

Date _____ Telephone _____

APPENDIX C

STATEMENT OF ASSURANCES

New Mexico Human Services Department
Brain Injury Services Program, RFP # 19-630-8000-0001

This form must be completed and signed by the Offeror and required documentation **must be returned with the proposal. This signed form and requested documentation in A-G must be provided as part of the response to Factor 1.A.12**

A. Corporate

1. Copy of agency article of incorporation, as approved by New Mexico Public Relation Commission.
2. Copy of agency by-laws.
3. Copy of agency annual corporate report, as filed with the New Mexico Public Regulation Commission for all agencies who have complete one (1) year of fiscal operation.

B. Financial Status

A proposal can be rejected if, after review of the document submitted under this section, the HSD determines an Offeror is not fiscally sound. Please provide:

1. Current Fiscal report
2. Audited financial statements for the three most current years including the independent auditor's summary of findings (management letter).
3. Two most recent internally prepared quarterly financial statements.
4. Copy of proof of registration with the New Mexico Taxation and Revenue Department for the payment of gross receipts tax or proof of grant of an exception from payment of federal income tax pursuant to the Internal Revenue Code of 1954, 26 USC Section 501 (C) (3).

C. Licensing and Certification

1. If your agency operates a licensed health facility or facilities, attach a current copy of certificate(s).
2. Statement that licensing requirements have been met or is in process.
3. The agency agrees to hire, employ and sub-contract with only licensed and/or certified personnel for the provision of all services that require such licensure and/or certification.

D. Board of Directors

A list of all current members of the agency board of directors to include:

- Name and title
- Address
- Date and term on board
- Ethnicity (optional)
- Occupation
- Consumer identification (disability/brain injury, ethnicity)

E. Compliance with Federal and State Regulations

The agency agrees to comply with all Federal and State legal requirements, including Human Services Department policies and regulations, which apply to the services being provided.

F. Proof of Insurance

As part of your contractual agreement with the Human Services Department, you are required to carry insurance coverage. A proposal can be rejected if, after review of the documents submitted under this section, verification of insurance is missing. You must submit applicable:

1. Professional Liability Insurance
2. Surety Bonding for individual practitioners
3. Dishonesty Bonding for agencies and group practices

G. Pay Equity Initiative Requirements

You must submit with your proposal Pay Equity Reporting Form PE10-249, or Form PE250 (depending on the size of your organization or company) or a certification that your organization or company is exempt. Please refer to Section IVA3 of this document and https://www.generalservices.state.nm.us/statepurchasing/Pay_Equity.aspx for forms and additional guidance.

I certify that the information provided through these assurances to the Human Services Department is true and correct, and I fully assure compliance with all the requirements cited above.

Authorized Signature of Agency

Date

Title

APPENDIX D

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 may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-1 81 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code 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.

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

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

The following definitions apply:

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

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

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

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

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

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

Name(s) of Applicable Public Official(s) if any: _____
 (Completed by State Agency or Local Public Body)

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Item	Description
Contribution Made By	
Relation to Prospective Contractor:	
Name of Applicable Public Official	
Date Contribution(s) Made	
Amount(s) of Contribution(s)	
Nature of Contribution(s)	
Purpose of Contribution(s)	

(Attach extra pages If necessary)

 Signature

 Date

 Title (Position)

—OR—

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

Signature

Date

Title (Position)

APPENDIX E

NEW MEXICO EMPLOYEE HEALTH COVERAGE FORM

1. For all contracts solicited and awarded on or after January 1, 2008: 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 and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
2. 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.
3. 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://www.bewellnm.com>
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined revenue (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

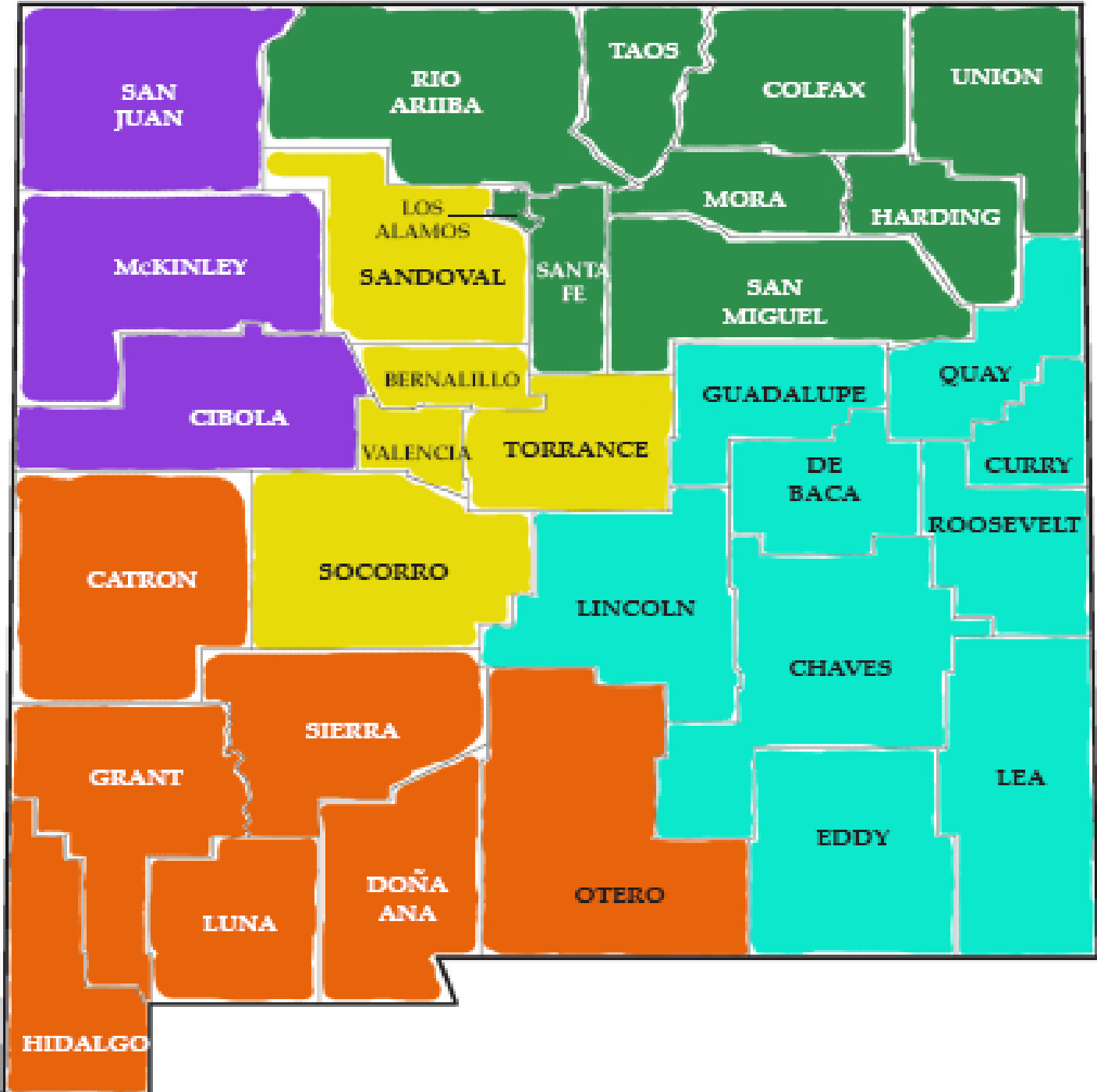
Signature of Offeror: _____ Date _____

APPENDIX F

GEOGRAPHIC MAP OF NEW MEXICO

This map provides a visual representation of the five (5) separate geographic regions within the State of New Mexico, served by the BISF Program.

Brain Injury services through RFP # 19-630-8000-0001, provided statewide.



APPENDIX G

COST RESPONSE FORM and FUNDING TABLE

RFP # 19-630-8000-0001 – Brain Injury Services

New Mexico Human Services Department - Brain Injury Program

Cost Response Form - Brain Injury Services

This form must be submitted as part of the response to Mandatory Specifications in Section IV, Letter C, Factor III.

Offeror Name _____

BISF Service Component Funding Request (Complete A or B and Total; See Funding Table for Available Funding)

	BISF Service	Region	Projected Number of Participants (served annually)	Total Yearly Funding Requested	Total Yearly Funding for Administrative Costs (included in PMPMs for SC)
A*	Service Coordination*	METRO		\$	\$
		NE		\$	\$
		NW		\$	\$
		SE		\$	\$
		SW		\$	\$
B**	Fiscal Intermediary Agent**	Statewide		\$	\$
TOTAL FUNDING REQUESTED				\$	\$

*See Funding Table: Column C

**See Funding Table: Column D

Please indicate other funding your agency is currently receiving

		Number Serving/ Projected	Yearly Funding Received/ Projected
C	Medicaid		\$
D	Medicare		\$
E	Other Federal Funds (Specify)		\$
			\$
F	Other HSD Funds (Specify)		\$
			\$
G	Other State Funds (Specify)		\$
			\$
H	Other Funds (Specify)		\$
			\$
I	GRAND TOTAL (C-H)		\$

BISF Funding Table FY20 (July 1, 2019 – June 30, 2020)
Brain Injury Services
New Mexico Human Services Department - Brain Injury Program

All figures are estimates. The NM HSD may reallocate funding based on proposals and funding availability.

A Counties	B Region	C Service Coordination - Available Funding by Region	D Fiscal Intermediary Agent Total Available Funding (Maximum Funding = \$555,250 for BISF HCBS + \$128,860 for Administrative Costs.)	E Total Available Statewide for HCBS through BISF Contracted FIA (Maximum of \$4,250 /participant/year)	F Total Available Support for Direct Services (Columns C+D)
Bernalillo	Metro [up to two (2) contracts available]	\$151,200			
Sandoval					
Socorro					
Torrance					
Valencia					
Harding	Northeast [up to two (2) contracts available]	\$151,200			
Los Alamos					
Mora					
Rio Arriba					
San Miguel					
Santa Fe					
Taos					
Union					
Colfax					
Cibola					
McKinley					
San Juan					
Chaves	Southeast	\$75,600			
Curry					
DeBaca					
Eddy					
Guadalupe					
Lea					
Lincoln					
Quay					
Roosevelt					
Catron					
Dona Ana					
Grant					
Hidalgo					
Luna					
Otero					
Sierra					
TOTALS		\$529,200	\$684,110	\$555,250	\$1,213,310

APPENDIX H
SAMPLE CONTRACT

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

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 Department of Finance and Administration (DFA).

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 DFA. 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 DFA. 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 DFA. 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 programs by providing each employee with, as a minimum, the following web site link to additional information: <https://www.bewellnm.com>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. 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.

24. 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.

25. 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]

26. 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.

27. 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.

28. 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."

29. 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.

30. 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.

31. 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 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.

C. The Contractor certifies that the Confidential Information processed during the performance of this Agreement will be deleted from, or otherwise wiped, removed, or rendered unreadable or incapable of reconstitution by known means on 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.

D. 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.

E. 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 IRS Publication 1075, 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.

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

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

32. Criminal/Civil Sanctions.

A. Each officer, employee, and/or subcontractor of the Contractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by the Contractor that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by Internal Revenue Code (IRC) Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

B. Each officer, employee, and/or subcontractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by Contractor that any return or return information made available in any format 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 shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know may constitute a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of

the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

C. Additionally, 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 discloses 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. Furthermore, the Contractor will inform its officers and employees of the penalties imposed by the HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), and HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), which provide that any officer or employee of a contractor, who willfully discloses Protected Health Information in any manner to any person not entitled to receive it, may be subject to civil and criminal penalties of up to \$50,000 and up to one year imprisonment.

D. Contractor agrees that granting access to Confidential Information to any individual must be preceded by certifying that each individual understands the HSD's applicable security policy and procedures for safeguarding the Confidential Information. Contractors must maintain authorizations issued to such individuals to access Confidential Information through annual recertification. The initial certification and recertification must be documented and placed in a file for the HSD's review. As part of the certification and at least annually afterwards, Contractor will be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches per Section 10 of IRS Publication 1075.)

33. Inspection.

The HSD and/or its regulating federal partners (such as IRS, CMS, FNS, etc.) shall have the right to send its officers and/or employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work related to Confidential Information under this contract. On the basis of such inspection, the HSD and/or regulating federal partners may communicate specific measures to be performed or met by the Contractor as may be required in cases where the Contractor is found to be noncompliant with contract safeguard.

34. 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.]*

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

A. 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. IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies to include any Service Level Agreement requirements;
5. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
6. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

36. Authority.

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

The remainder of this page intentionally left blank.

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

By: _____ Date: _____
HSD Cabinet Secretary

By: _____ Date: _____
Danny Sandoval, HSD Chief Financial Officer

Approved for legal sufficiency:

By: _____ Date: _____
Christopher P. Collins, 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 DFA Contracts Review Bureau:

By: _____ Date: _____

Exhibit A

SCOPE OF WORK

Exhibit B*[use only in a PSC with a Business Associate]***HIPAA Business Associate Agreement**

This Business Associate Agreement (“BAA”) is entered into between the New Mexico Human Services Department (“Department”) and [REDACTED], 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 [REDACTED] 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 [REDACTED] as “Contractor”) of Protected Health Information. This Business Associate PSC is intended to supplement the obligations of the Department and the Contractor as set forth in PSC [REDACTED], 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 the same or Related Agreement, 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:
 - 1) **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.
 - 2) **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

- 3) 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:
1. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
 2. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
 3. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
 4. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
 5. 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.
- f. 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.
- g. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- i. 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 [REDACTED]; 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. 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 [REDACTED], 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 [REDACTED], 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 [REDACTED], 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 [REDACTED]. 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 [REDACTED], 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 [REDACTED], 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 [REDACTED], 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

- a. 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.
- b. 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

- a. 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, the Related 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.
- b. 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

- a. 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 [REDACTED], 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 [REDACTED] 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 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, for so long as the Business Associate maintains the PHI.
- 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 [REDACTED] and BAA without liability or penalty in accordance with Article 4, Termination, of PSC [REDACTED], if Business Associate does not cure the breach within the time specified by the Department; or,
 - ii. immediately terminate this PSC [REDACTED] 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 [REDACTED], 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 [REDACTED] 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 [REDACTED], shall be resolved to permit the Department to comply with the HIPAA Standards.
- e. 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.
- f. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC [REDACTED], 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 [REDACTED] pursuant to its termination provisions.
- g. 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.

- h. 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 [REDACTED] 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 [REDACTED], except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- i. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate PSC between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

APPENDIX I
Exhibit A

Sample Scope of Work: SERVICE COORDINATION

Scope of Work

The scope or statement of work (SOW), referenced on page 1 in Section 1, is to be presented here as Exhibit A in the PSC.

A. THE CONTRACTOR SHALL:

1. Perform SERVICE COORDINATION services outlined in this Scope of Work for the Brain Injury Services Fund (BISF) Program in accordance with the Traumatic Brain Injury (TBI) Trust Fund Regulations 8.326.10 NMAC; any newly adopted rules, regulations, and policies, including Letters of Direction and Standard Operating Procedures as specified by the Human Services Department (HSD); and the FY20 Brain Injury Services Request for Proposals (RFP).
2. Provide SERVICE COORDINATION to approved BISF Program participants living with brain injury, abiding by the definition of “brain injury” as enacted by the 2014 Legislature of the State of New Mexico, amending Section 27-1-16 NMSA 1978.
3. Perform the following SERVICE COORDINATION functions in the _____ region(s) of New Mexico:
 - a. Serve as the initial point of entry for individuals seeking services from the BISF Program. Assist individuals with the program application and intake process.
 - b. Determine eligibility of individuals to receive services provided under the BISF Program, ensuring that only those with a crisis need are enrolled. Individuals must be found eligible prior to being referred for BISF home and community based services (HCBS) covered through the Fiscal Intermediary Agency (FIA).
 - c. Document the individual’s eligibility ICD-10 code, residency status, crisis need, and eligibility for Medicaid.
 - d. Contact the Aging and Disability Resource Center (ADRC), or other designated entity, with the participant to register the participant on the Central Registry for Medicaid HCBS Community Benefit. Report participant’s registry status with any BISF exception request to continue services beyond one year.
 - e. Ensure that no individual/participant receives both long-term Medicaid or Waiver services and short-term BISF services through the Brain Injury Services Fund without a special exception from the HSD BISF Program Manager to continue for a 90-day interim period.
 - f. Assess the service needs of participants with brain injury using the HSD-approved Assessment tool. Assessed needs, including professional Life Skills Coaching, will be documented in the Service Coordination Independent Living Plan (ILP). A new full assessment will be completed prior to the end of a service year only for those individuals

whose crisis needs have not resolved and are anticipated to require continuation of services.

- g. Identify and coordinate SC and BISF HCBS for program participants, including appropriate mental/behavioral health supports as needed, while facilitating independent living. Assist participants in gaining access to other programs, resources, and services.
- h. Make reasonable attempts to identify other funding sources for services prior to accessing funding for BISF HCBS; and document attempts, using appropriate BISF Program forms.
- i. Access BISF HCBS funding as the payer of last resort, utilizing funding for services assessed as a need to address the individual's crisis needs, while other payer sources are sought and arranged.
- j. Create and maintain initial and updated quarterly Independent Living Plans (ILPs) for each participant to specify all services provided under the TBI/BISF that are needed to address the individual's crisis needs, as assessed. ILPs will address only those needs that have been assessed as a crisis, requiring help from the program in the form of SC or BISF HCBS, including professional Life Skills Coaching (LSC). ILPs that follow the initial quarter of services shall reflect the needs assessed in the 90 Day Narrative Review, which serves as the re-assessment tool for individuals on the program. The ILP shall be drafted collaboratively with the participant and include the following:
 - 1) Individual goals and objectives, related to the provision of Service Coordination and any assessed needs, including but not limited to BISF HCBS.
 - 2) Education and support necessary to reach goals and objectives.
 - 3) Expected measurable outcomes that are achievable in a 90-day period.
 - 4) Concrete timeframes for reaching goals and meeting objectives.
 - 5) Specific plans for discharge and specific notations regarding transference to another program or payer source.
 - 6) Identification of all persons, services and/or products necessary to reach the participant's goals and accomplish their objectives, including the identity of alternate insurers, community support agencies, or other supports.
 - 7) Identification of the specific services and cost of BISF HCBS services and/or goods to be covered using funding through the FIA, as indicated on the BISF Program Rate Sheet.
 - 8) Number of hours per month the individual will receive BISF Service Coordination, as well as hours and/or frequency of any BISF HCBS, as assessed (e.g., Homecare).
 - 9) Documentation on an initial and any subsequent ILP of any recommended but declined services, resources, or other assistance.
 - 10) Signatures of both the Service Coordinator and the participant.
- k. The Service Coordination ILP must be reviewed with the participant at least quarterly. All reviews, including closures, must be clearly documented on the ILP and/or in the participant's file.
- l. Provide a copy of the ILP to the participant upon initiating the ILP and any time there is a change to the ILP.
- m. Refer approved program participants with assessed BISF HCBS needs to the BISF

contracted FIA in a timely manner, using standard operating procedures developed by HSD. Referrals to BISF HCBS to resolve a crisis need will be made while other payer sources are being sought and kept in place, until services are active under the new payer source, or until the crisis is otherwise resolved. Referrals for BISF HCBS will list the specific goals to be monitored on the ILP. Referrals for HCBS services and goods to other payer sources will result in completion of the goal with no further SC monitoring or BISF Program involvement.

- n. Document and monitor BISF HCBS goals to measure the participant's progress and ensure that goals remain appropriate and are fulfilled according to measurable outcomes commensurate with the 90-day-approved duration of services. Allow for continuation of BISF HCBS only as justified.
- o. Reassess participants quarterly using the 90 Day Narrative Review and annually using the full assessment to determine continued need for BISF Program services. The 90-Day Narrative Review is to be created *prior to* the development of each *new* ILP, which follows the initial or most currently approved 90-day period of services. The 90-Day Narrative Review shall serve as a re-assessment tool and shall be implemented at the end of each quarter of active services, including the final review prior to a participant's inactivation of services and discharge from the program. The review will note progress with respect to crisis goals related to SC and BISF HCBS, including professional LSC, as appropriate.
- p. For service extension exception requests beyond one service year, the BISF Service Coordination Agency will submit to the HSD Brain Injury Program Manager the Extension Request Form along with the full assessment, the last quarter Service Coordination ILP, and any supporting documentation that justifies the continuation of requested services. The contracted SC agency shall review these materials for completeness and accuracy prior to their submission to HSD. Written approval for extended services or services reactivated within six (6) months of inactivation must be obtained by the Service Coordination Agency from the HSD prior to providing services beyond the participant's most recent service year. A new ILP shall not be written or implemented, until approval for extended services has been granted from the HSD. Copies of the written Service Coordination justification and written HSD approval must be in the participant's file. Participants approved for extensions beyond one year will be reassessed using the full BISF Service Coordination Assessment prior to development of the new ILP, using procedures established by HSD.
- q. Create and execute a transition plan for eventual BISF Program inactive status. Discontinue BISF HCBS and SC services upon identification of alternate payer sources, reaching ILP goals in resolution of the crisis, or in the event that the participant does not fulfill participant responsibilities.
- r. Prioritize cases based on crisis need and transition participants to inactive status once other payer sources have been identified and/or ILP goals to resolve an identified crisis have been achieved. The provider agrees to work with the HSD on the prioritization of the caseload as necessary.
- s. Maintain a master file on each participant's services, regarding Service Coordination and BISF HCBS. The file will include the following required documentation:
 - BISF Program Application and Intake paperwork
 - Eligibility documentation (ICD-10 code from qualified practitioner and medical

- records substantiating the Brain Injury; residency documentation; description of the crisis need)
- Other medical documentation, as applicable
 - Initial, one-year exception, and reactivation assessments
 - Documentation of referrals to the FIA for BISF HCBS.
 - Initial and all subsequent Independent Living Plans, including updates and revisions, regarding SC goals and BISF HCBS.
 - Initial and subsequent 90-Day Narrative Reviews (re-assessment basis for beginning a new ILP)
 - Participant contact records (contact notes, progress notes/reports, referrals, outcomes of services, documentation of other payer sources, etc.) to reflect progress made on ILP goals (SC and BISF HCBS).
 - Exception Requests; Approval/Denial documentation
 - Billable hours
 - Grievance and Appeal documentation
- t. Perform on-going quality assurance evaluations for each participant's ILP goals and related services.
 - u. Meet no less than one session per month with each active participant and including those on limited status for Service Coordination. With approval from the HSD Brain Injury Program Manager, Service Coordination contacts may be by phone for participants living more than 150 miles roundtrip; such participants must receive a face to face meeting with the Service Coordinator at a quarterly minimum.
 - v. Participate in meetings with other BISF contractors, as needed or as scheduled by the HSD.
 - w. Facilitate team meetings with the participant and other program agencies or Professionals, as needed.
 - x. Coordinate with, but do not duplicate, services of non-BISF Service Coordination / Case Management, Life Skills Coaching, or Fiscal Intermediary Services.
4. Ensure all standard notices to brain injury participants and materials produced for the public are written at or below a 6th grade reading level and meet all related federal and state requirements. Contractor will submit all review requests to HSD in writing.
 5. Maintain an accessible physical office location and staff in each region served, ensuring that all agency sites at which BISF services are provided are barrier-free and comply with the accessibility standards of the Americans with Disabilities Act (ADA).
 6. Maintain a 24-hour emergency response system that allows participants or their representatives to contact the Service Coordinator Agency. An emergency response written policy should be provided to all participants and available for review by HSD.
 7. Employ staff and subcontractors that meet the requirements in the TBI Trust Fund Program Regulations 8.326.10 NMAC, newly amended regulations, and the FY20 Brain Injury Services RFP.
 8. Establish and maintain on-going BISF Program-related staff training, as needed.

9. Notify the HSD in writing within five (5) business days in the event the Contractor is without key staff that supports the terms of this contract or key staff changes. Key staff under this contract includes oversight management staff as well as the Service Coordinator(s) hired to provide services within the region.
10. Abide by Sections 1 through 5 29-17-2-5 NMSA 1978 cited as the “Caregivers Criminal History Screening Act” as it relates to each Service Coordinator or other employee, who has or will have direct contact with BISF Program participants. Records of screenings and results must be made available to the HSD upon demand.
11. Maintain full-time staff to caseload ratios to fulfill the caseload needs of the region in which the agency provide service using a staff-participant ratio of no more than 1:30 for Service Coordinators.
12. Be reimbursed at an individual rate of \$140 per month for applicants or reactivating participants, who present with a crisis need and an individual rate of \$210 per approved participant per month for services performed by the Service Coordination Agency. These rates cover all hours of service provided and related administrative and indirect costs.
[NOTE FOR OFFERORS: Allocation of SC funding dollars will be in accordance with multiple source contract awards by HSD; amounts noted in Funding Table (Appendix G) are not a guarantee of a total amount awarded and will depend on whether a region is served by more than one Service Coordinator and/or through one or more agencies.]
13. Operate within the allowable budgets for payment of authorized goods and services through the BISF Program’s contracted Fiscal Intermediary Agent and limit participant BISF HCBS referrals and approved services to an annual participant cap of \$4,250 for assessed BISF HCBS, unless approved in writing by HSD. BISF HCBS provided will be based on assessed needs and not on a participant’s requests to utilize the full amount available. HSD reserves the right to impose regional caps, as warranted to ensure that regional BISF HCBS needs of enrolled participants can be met.

The contractor will ensure that services are limited as follows:

- a. No more than \$4,250 per year per participant, unless through an approved written exception issued by HSD. Exception requests will be submitted by the SC agency to HSD in writing.
- b. No more than \$75,000 per participant in a lifetime.
- c. No more than \$10,000 per participant for environmental modifications once in a lifetime.
- d. Only one housing assist per participant in a lifetime.
- e. Only those BISF HCBS (a.k.a., “Crisis Interim Services”) described in the TBI Trust Fund Program Regulations 8.326.10 NMAC or amended regulations, unless an exception request is granted in writing from the HSD. Coverage for certain services will be limited to the frequencies recommended by medical providers on the MAD 404 Physicians Orders.
- f. Persons with a documented brain injury and qualifying ICD-10 code, as specified by

HSD.

- g. Persons with a current Independent Living Plan that details the item(s) and/or service(s) requested.
 - h. Any adjustments, exceptions, or funding reallocations must be requested in writing by the SC Agency and approved in writing by the HSD.
14. Establish and maintain a system to track monthly and quarterly cost of referrals including client and service detail.
 15. Follow and comply with standard operating procedures and policies as developed and issued by HSD regarding continuation of services for a participant beyond an initial 90-day ILP or year of service.
 16. Establish internal grievance reporting procedures and follow HSD written incidence reporting policies and standard operating procedures, adhering to all provisions set forth in 8.326.10 NMAC. Report all written grievances to HSD, in the manner prescribed by HSD. Provide targeted and appropriate follow-up and aim to reduce recurrences.
 17. Follow written incidence reporting policies and standard operating procedures, utilizing the HSD BISF Critical Incident Reporting form and provide necessary follow-up and aim to reduce recurrences.
 18. Maintain a current waiting list of all individuals that have made application for BISF services and are awaiting an eligibility determination. The Waiting List is to be included and detailed as part of BISF quarterly reporting.
 19. Maintain an up-to-date directory of local, regional, state, and national Brain Injury and other applicable resources for use by staff, applicants, and program participants by region and provide to HSD upon request.
 20. Submit quarterly reports to the Human Services Department's BISF Program as prescribed, no later than the 15th day of the month following the close of the previous quarter, excepting weekends and state holidays (**For FY20:** October 15th, January 15th, April 15th and July 10th.) The requirement of the deliverable date **July 10, 2020**, or due date established by HSD's Administrative Services Division toward the end of the fiscal year, shall survive the termination date of this contract. HSD may delay payment due to untimely, missed, or incomplete reports.
 21. Generate *ad hoc* reports regarding the delivery of BISF Program services, as requested by the HSD that are within the scope of responsibility for the Service Coordination Agency. In the event that an *ad hoc* report is requested, the Contractor will respond within ten (10) business days or as specified by HSD.
 22. Reference the HSD Brain Injury Services Fund Program as the funding agency, using mutually agreeable language, on any BISF-specific printed materials, marketing materials, public announcements, and brain injury webpages. HSD shall review and approve in writing any marketing materials, forms, letters, print materials, and web pages related to the provision of

Brain Injury Services Fund services *prior to* implementation. All standard notices to brain injury participants and materials produced for the public will be written at or below a 6th grade reading level and meet all related federal and state requirements. Contractor will submit all review requests to HSD in writing.

23. Attend and participate in HSD BISF Program Provider Trainings with Service Coordination representation from each region served by the contractor, as scheduled by the HSD.
24. Attend and participate in contract monitoring calls, *ad hoc* conference calls, and BISF Program Joint Contractor Operations Meetings, as prescribed by HSD, for the purpose of addressing and improving delivery of services. Whenever possible, the Contractor will be given a minimum advance notice of three (3) business days.
25. Submit to formal and desk audits as prescribed by the HSD, with prior notification.
26. Comply with all applicable state and federal confidentiality laws.
27. Comply with HIPAA laws and regulations. Contractor will provide the HSD with HIPAA training certifications within 60 days of contract execution for all case management personnel and all key personnel conducting oversight for the contracted Scope of Work. Contractor shall also provide HIPAA training certifications within 30 days of hiring any new case management or management oversight personnel.
28. Have a governing board whose membership is representative of the population of the community served, including persons with a disability and/or at least one-person living with a Brain Injury, caregiver or family member of a person living with brain injury, or a professional working with brain injury.
29. Incorporate a process within the program evaluation component that will demonstrate the use of outcome data related to Quality Assurance processes as related specifically to the BISF Program. Criteria should be established to determine if an outcome has been accomplished. BISF-specific Quality Assurance processes, established outcome criteria and outcomes will be reviewed at each contractor audit. The evaluation and measurement of the effectiveness of BISF services will occur through the collection and analysis of data related to
 - a. Quarterly BISF Participant Satisfaction Surveys
 - b. Timely processing of BISF Program Applications
 - c. Timely and appropriate delivery of participant services, as noted in BISF participant ILPs
 - d. Measurement of outcomes related to specific ILP goals, objectives and action steps
 - e. Modifications to BISF services in response to outcomes
 - f. Other factors may be added as the program is evaluated and program outcomes evolve.
30. Be reimbursed up to a maximum of **\$6,300** monthly (**\$529,200** divided by 7 SC “funding slots” = \$75,600 divided by 12 = \$6,300 for each full 30 member caseload), cumulatively for the provision of BISF Service Coordination in the contracted region(s), based upon the Per Member Per Month rate(s), approved by the HSD (NOTE TO OFFEROR: Language will be

adapted according to total contract award, number of related SCs and regions to be served.)

31. Bill the Human Services Department monthly in the manner prescribed by the Department.

B. GENERAL PROVISIONS:

1. Health Insurance Portability and Accountability Act of 1996.

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, and the terms in Attachment 2, which is attached and incorporated by reference.

2. Payment made by the HSD to the Contractor shall not forfeit the right of the HSD to recover excessive payments or those billed erroneously by the Contractor.

3. The Contractor shall be available to conduct business Monday through Friday during normal business operating hours, except for observed State holidays.

C. PERFORMANCE OF SERVICES

Services will be performed within _____ region(s) of the State of New Mexico in the participant's home, community or at the Service Coordination Agency.

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APPENDIX J

Sample Scope of Work: **FISCAL INTERMEDIARY AGENT SERVICES**

Scope of Work

The scope or statement of work (SOW), referenced on page 1 in Section 1, is to be presented here as Exhibit A in the PSC.

A. THE CONTRACTOR SHALL:

1. Serve as the BISF FISCAL INTERMEDIARY AGENT (FIA) to administer and provide home and community based services (HCBS) for the Brain Injury Services Fund (BISF) Program in accordance with the Traumatic Brain Injury (TBI) Trust Fund Regulations 8.326.10 NMAC (see “Crisis Interim Services”); any newly adopted rules, regulations, Standard Operating Procedures, Letters of Direction and policies, as specified by the Human Services Department (HSD); all applicable state and federal laws; and the FY20 Brain Injury Services Request for Proposals (RFP).
2. Provide BISF FISCAL INTERMEDIARY AGENT services to approved BISF Program participants living with brain injury, abiding by the definition of “brain injury” as enacted by the 2014 Legislature of the State of New Mexico, amending Section 27-1-16 NMSA 1978.
3. Limit coverage of BISF HCBS to:
 - a) Persons that have a current BISF Program Service Coordinator.
 - b) No more than \$4,250 per year per participant, unless through approved written exception by HSD.
 - c) No more than \$75,000 per participant in a lifetime.
 - d) No more than \$10,000 per participant for environmental modifications once in a lifetime.
 - e) Only one emergency housing assistance per participant in a lifetime, unless an exception is made in writing by the BISF Program at the HSD.
 - f) Only those BISF HCBS (a.k.a., “Crisis Interim Services”) described in the TBI Program Regulations 8.326.10 NMAC, amended regulations, FY20 Brain Injury Services Request for Proposals (RFP), unless an exception is granted in writing by the HSD BISF Program.
 - g) Persons with a documented brain injury and qualifying ICD-10 code.
 - h) Persons with a current Independent Living Plan that details the item(s) and/or service(s) requested.
 - i) Services and goods requests processed by BISF Program contracted Service Coordination agencies.
 - j) The frequencies recommended by medical providers on the MAD 404 Physicians Orders.
 - k) Any funding limits that may be set by the HSD for each region or for specific contractors of Service Coordination. Specifically, the total service referrals, as defined by total costs of authorized services at full utilization, that can be funded are not to exceed the set monthly regional or SC contractor allocation. The contractor will reject any service referrals that cause the allowable annual, regional or contractor-specific funding limitations to be exceeded.

4. Accept Service Coordination referrals for the contracting of vendors, providers and contractors to provide BISF HCBS, which include professional Life Skills Coaching services, in the Metro, Northwest, Northeast, Southeast, and Southwest regions and provide these services under 8.326.10.13.N.1: Under this provision, the Contractor shall:
 - a) Develop and maintain a specialized vendor, provider network for the provision of BISF HCBS; vet all vendors and providers for required and necessary credentialing and licensure as outlined in 8.326.10 NMAC; educate HCBS vendors about the brain injury specific needs of enrolled participants in working through any service delivery issues; and respond to critical incidents that concern the brain injury participant's BISF HCBS.
 - b) Arrange contracts and letters of agreement with vendors, providers and contractors in the Metro, Northwest, Northeast, Southeast and Southwest regions, who can provide BISF HCBS, as such services are available in the various regions and in accordance with referral requests submitted by the Service Coordinator.
 - c) Implement the payer of last resort rule for the provision of BISF HCBS in the Metro, Northwest, Northeast, Southeast and Southwest regions. The FIA may contract and pay for such services in the event that other resources are not available in a region or readily accessible to a participant in that region.
 - d) Set appropriate rates for compensation to vendors, providers and contractors, using Medicaid/Medicare rates as applicable to the service. Issue up-to-date rate sheets for BISF HCBS services at the frequency established by HSD.
 - e) Manage and track the expenditures on program participants who access BISF HCBS.
5. Maintain a file on each participant enrolled in BISF HCBS including, but not limited to, the following documentation:
 - a) BISF Program Application pages, including Release of Information, and ICD-10 Code Confirmation, and Release of Liability.
 - b) Dated Referral(s), Requests for Information, and all referral supporting documentation supplied by the Service Coordination agency.
 - c) Approval and reactivation paperwork, including extension of services.
 - d) Independent Living Plans from Service Coordinator in every quarter with every referral submission to include: services, products, estimated costs, duration and/or limits (this must be obtained prior to arrangement of service provision).
 - e) Medical documentation, as applicable, including Physicians Orders and Treatment Verification Forms.

The HSD BISF Program may require additional documentation.
6. Ensure that no participant receives both long-term Medicaid or Waiver services and short-term BISF HCBS through the Brain Injury Services Fund without a special exception from the BISF Program Manager. Exceptions filed by the Service Coordination agency, if approved in writing, will only be granted on a single 90-day interim basis.
7. Procure goods and arrange initial and renewed contracts and letters of agreement with vendors and contractors who provide the goods, services and supports, in accordance with written referrals.

8. Manage and track the expenditures and service utilization of participants in the program. The funds to cover the cost of a referred and authorized service at full monthly utilization are to be considered “encumbered” for a full 90- day period and may not be utilized for other purposes, regardless of percentage of utilization. Funds not utilized in a given month shall be disencumbered and accrue in a surplus fund, which may be used with HSD’s written authorization to pay for other BISF-covered services.
9. Renew BISF HCBS for an additional 90 days using the standard operating procedures issued by HSD.
10. Reimburse BISF participants and contracted vendors and providers for services provided between **July 1, 2019** and **June 30, 2020** only (within **FY 20**). Reimbursement requests for services/goods provided under previous fiscal year contracts will not be paid to either the individual in service or the Contractor, except as requested by the contractor in writing and approved by the Human Services Department (HSD) in writing.
11. Coordinate with, but do not duplicate, services of non-BISF Service Coordination / Case Management or Life Skills Coaching.
12. Conduct outreach to potential providers as a means of extending the provider network available to the Program.
13. Reference the HSD Brain Injury Services Fund Program as the funding agency, using mutually agreeable language, on any BISF-specific printed materials, marketing materials, public announcements, and brain injury webpages. HSD shall review and approve in writing any marketing materials, forms, letters, print materials, and web pages related to the provision of Brain Injury Services Fund services prior to implementation.
14. Ensure all standard notices to brain injury participants and materials produced for the public are written at or below a 6th grade reading level and meet all related federal and state requirements. Contractor will submit all review requests to HSD in writing.
15. Employ staff and subcontractors that meet the requirements in the TBI Trust Fund Program regulations 8.326.10 NMAC or amended regulations and the FY20 Brain Injury Services RFP.
16. Maintain a current listing of applicable brain injury resources for use by staff and submit to HSD an updated version within 60 days following the contract start date.
17. Establish internal grievance reporting procedures and follow HSD written grievance and appeals policies standard operating procedures for BISF participants, adhering to all the provisions set forth in 8.326.10.15 NMAC. Report all written grievances to HSD, in the manner prescribed by HSD. Provide targeted and appropriate follow-up and aim to reduce recurrences.
18. Follow written incidence reporting policies and standard operating procedures, utilizing the HSD BISF Critical Incident Reporting form and provide necessary follow-up, where BISF HCBS are at issue, and aim to reduce recurrences.

19. Attend and participate in meetings with the other BISF contractors, as scheduled by HSD.
20. Attend and participate in contract monitoring calls, *ad hoc* conference calls, and BISF Program Joint Contractor Operations Meetings as prescribed by HSD for the purpose of addressing and improving delivery of services. Whenever possible, the Contractor will be given a minimum advance notice of three (3) business days.
21. Attend and participate in BISF Program Provider Trainings, and provide utilization report updates, as requested.
22. Attend and provide utilization reports to the Brain Injury Advisory Council, as requested.
23. Submit detailed monthly expenditure and utilization reports on each participant in service to their BISF Service Coordination Agency and to the HSD BISF Program Manager, including all services and goods provided the previous month. Reports must be submitted according to the schedule and frequency established by HSD.
24. Submit Quarterly reports to HSD which include:
 - a) Fiscal reports detailing expenditures and percentage utilization for each approved participant service. Reports for FQ1-FQ3 will be submitted no later than the 20th day after the close of a fiscal quarter. The FQ4 report will be due to HSD in accordance with the year-end schedule set by HSD.
 - b) Cumulative expenditure transaction reports which include all payment activity on behalf of enrolled participant through the close of the fiscal quarter.
25. Generate *ad hoc* reports regarding the delivery of BISF Program services, as prescribed by the HSD.
26. Consult with and submit for review and approval by HSD any newly proposed or amended requirements for delivery of services to BISF participants.
27. Submit to formal and desk audits as prescribed by the HSD, with prior notification.
28. Bill the Human Services Department (HSD) monthly in the manner prescribed by the Department. Billing is to include detailed itemized reports of expended funding totals by region served, by participant. Billing is to be submitted no later than the 20th of each month, with the exception of final, end of year billing, which must be submitted no later than **July 15, 2019 or date prescribed by the HSD.**
29. Be reimbursed up to, but no more than **\$684,110** total during the term of this contract for performing the service of acting as of the fiscal intermediary agent for the Department, for providing HSD with all required deliverables, and for reimbursement of expenses incurred by Contractor for payment for the actual direct services and goods that participants receive. Compensation for Administration and direct services/goods shall be in accordance with the distributions outlined in “A” and “B” below:
 - A. Administration of Fiscal Intermediary Services**— The allowable reimbursement for administrative services performed by the fiscal intermediary agent shall be billed to the HSD in 1/12 increments throughout the contract period. Contractor shall be

compensated up to, but no more than \$10,738.33 cumulative monthly which may total up to \$128,860 total for the term of the contract for fiscal intermediary services delivered on behalf of the Department.

Administrative services performed include, but are not limited to, processing payment requests, establishing new vendors as requested by the Service Coordination Agency on behalf of a specific participant, opening new participant files and closing discharged participant files, delivery of all required billing, reports, and other contract deliverables. The fiscal intermediary cannot deny services to program participants based on available reimbursement amounts for administrative services.

- B. Direct Services and Goods**—Contractor shall be reimbursed for expenses incurred from vendors, providers or contractors for the provision of actual BISF HCBS and goods that have been provided directly to BISF participants. Reimbursement shall be at a projected \$46,270.83 cumulative monthly and \$555,250 for the term of the contract.

BISF-funded HCBS shall be capped annually at \$4,250 for each enrolled participant, unless an exception is approved in writing by HSD. HSD reserves the right to impose regional or contractor-specific caps, as warranted to ensure that regional needs of enrolled participants can be met. Any requests for exceptions regarding participant caps or outstanding vendor remittances shall be submitted in writing to the HSD.

HSD may delay payment due to untimely, missed, or incomplete reports. The Human Services Department may recoup funding from the Contractor for services or goods paid out of compliance with regional and/or monthly allocations or for billing outside of the guidelines described in the TBI Trust Fund Program regulations 8.326.10 NMAC, any amended regulations, and the FY20 Brain Injury Services RFP.

B. GENERAL PROVISIONS

1. Health Insurance Portability and Accountability Act of 1996.
The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, and the terms in Attachment 2, which is attached and incorporated by reference.
2. Payment made by the HSD to the Contractor shall not forfeit the right of the HSD to recover excessive payments or those billed erroneously by the Contractor.
3. The Contractor shall be available to conduct business Monday through Friday during normal business operating hours, except for observed State holidays.

C. PERFORMANCE OF SERVICES

Services will be performed throughout the entire State of New Mexico.

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APPENDIX K

REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

If the Offeror has provided contractual services for the Brain Injury Services Fund Program for eight (8) or more consecutive years, then only 2 external corporate references are required.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to the Procurement Manager by the RFP submission deadline for inclusion in the evaluation process.

References send completed form BY EMAIL to:

Linda Gillet, Ph.D., Procurement Manager
HSD / MAD/ ESPB
PO Box 2348
2025 S Pacheco
Santa Fe, NM 87504

Tel: 505-827-7218
Email: Lindab.gillet@state.nm.us

The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

**RFP # 19-630-8000-0001
REFERENCE QUESTIONNAIRE FOR:**

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, Human Services Department via mail or e-mail at:

Linda Gillet, Procurement Manager
HSD / MAD/ ESPB
PO Box 2348
2025 S Pacheco
Santa Fe, NM 87504

Tel: 505-827-7218
Email: Lindab.gillet@state.nm.us

no later than 3:00 pm on Thursday, March 28, 2019, and **must not** be returned to the company requesting the reference. Faxed submissions cannot be accepted.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page. If an item on the questionnaire is not applicable to services provided to your agency, please note this with "N/A" in the "Comments" section.

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

QUESTIONS:

1. In what capacity have you worked with this Contractor 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 Contractor'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 and other deliverables produced by the Contractor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

- 5. How would you rate the dynamics/interaction between the Contractor and your staff?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

- 6. How would you rate the dynamics/interaction between the Contractor and other Contractors working on the overall program/project?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

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

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

8. How satisfied are you with the products developed by the Contractor for use by the public?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

9. How would you rate the Contractor's responsiveness to requests for information?
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

10. How would you rate the Contractor's responsiveness to problems or complaints?
(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)
COMMENTS:

11. With which aspect(s) of this Contractor's services are you MOST satisfied?
COMMENTS:

12. With which aspect(s) of this Contractor's services are you LEAST satisfied?
COMMENTS:

13. Would you recommend this Contractor's services to your organization again?
COMMENTS:

APPENDIX L

RESIDENT VETERANS CERTIFICATION

Resident Veterans Preference Certification

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

Please check one box only

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

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

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

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

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

(Signature of Business Representative)* (Date)

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