ISSUED BY

The New Mexico Human Services Department

HUMAN SERVICES
DEPARTMENT

FOR THE PROVISION OF

Third Party Assessor - Utilization Review for the Human Services Department

RFP # 14-630-8000-0003

State Of New Mexico
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87504-2348
Sidonie Squier, Secretary

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I. INTRODUCTION

A. GENERAL INFORMATION

The New Mexico Human Services Department (HSD), through its Medical Assistance Division (HSD/MAD), is requesting proposals for a Quality Improvement Organization (QIO) or QIO-like entity to assist HSD in meeting the requirements of 42 CFR Part 456 – Utilization Control. Specifically, the HSD is seeking an organization to serve as the Third Party Assessor (TPA) to conduct the following utilization review and assessment functions for services and/or programs provided in the fee-for-service environment:

- Prior authorization and medical necessity reviews for Medicaid services, both physical and behavioral health;

- Prior authorization, medical necessity reviews, and medically frail exemptions for the Alternative Benefit Plan;

- Medical eligibility/level of care (LOC) determinations for recipients receiving long-term care services in an Intermediate Care for Individuals with Intellectual Disabilities (ICF/IID)\(^1\) facility;

- Medical eligibility/LOC determinations for recipients in the Program of All-Inclusive Care for the Elderly (PACE);

- Medical eligibility/LOC determinations and Individual Service Plan (ISP)/Service and Support Plan (SSP) reviews and budget approvals for recipients meeting ICF/IID LOC and receiving services through a Home and Community-Based Services (HCBS) Waiver\(^2\);

- Medical necessity reviews for Emergency Medical Services for Undocumented Aliens (EMSA);

- Prior authorization reviews for specified Developmental Disability (DD) HCBS Waiver professional and ancillary services;

- System entry of retroactive fee-for-service nursing facility prior authorizations; and,

- Medical necessity reviews for other designated services or programs identified by HSD as exempt from HSD’s Section 1115 (a) demonstration Waiver (“Centennial Care”).

The purpose of this Request for Proposals (RFP) is to select an Offeror that has the capacity, experience, and expertise to perform the requirements described within this RFP. While it is HSD’s intent to implement all of the review programs listed in this RFP, HSD may, at its

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\(^1\) Defined at 42 CFR 440.150 as Intermediate Care Facility for the Mentally Retarded (ICF/MR). This term is now referred to as ICF/IID.

\(^2\) The Medically Fragile HCBS Waiver is scheduled to transition to Centennial Care beginning January 2015.
discretion, modify or delay certain review functions due to the implementation of New Mexico health care reform initiatives. HSD reserves the right to gradually implement review types or to implement all or only some of the reviews.

B. BACKGROUND INFORMATION

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

1. HSD Resources and Locations

HSD has more than 1,800 authorized employees and contracts with community-based providers throughout the state. There are more than thirty (30) HSD/ISD field office locations statewide. HSD’s central offices are located in four (4) Santa Fe buildings: Plaza La Prensa (Fair Hearings); Pollon Plaza (Office of the Secretary, Income Support Division, Child Support Division, and Office of General Counsel); Ark Plaza (MAD); 1474 Rodeo Road (Administrative Services Department, Office of Inspector General, and Information Technology Division) 1301 Siler Rd.

2. Organization of HSD

HSD is a cabinet-level agency in the executive branch of the New Mexico state government, headed by a Cabinet Secretary appointed by the Governor and confirmed by the New Mexico Senate. HSD consists of the Office of the Secretary and five (5) divisions. Only those divisions or bureaus within each division that are related to this RFP are described herein.

a. Office of the Secretary

The Office of the Secretary consists of the Secretary of Human Services, the Deputy Secretary for Programs, the Deputy Secretary for Finance and Administration, the Office of General Counsel, and the Office of Inspector General.

The Secretary provides cabinet-level direction for HSD and serves as a point of appeal when contractual disputes arise. The Office of General Counsel provides legal support to all of HSD’s divisions, bureaus and programs. The Office of Inspector General investigates and pursues cases of fraud and abuse, and also administers the fair hearing process.

b. Administrative Services Division (ASD)

ASD provides general administrative support for HSD and all its programs, including Medicaid.

c. Income Support Division (ISD)
ISD is the primary source for eligibility determination for all HSD programs, including Medicaid. The division’s field staff of nearly a thousand (1,000) employees, supervisors and county directors is administered through four (4) district operations offices. Field staff is responsible for interviewing recipients, determining eligibility, and issuing benefits for the food stamp, cash assistance, Medicaid, and other assistance programs.

d. Medical Assistance Division (MAD)

MAD is the state agency responsible for managing and administering the federal Medicaid program. Medicaid is authorized under Title XIX of the Social Security Act. These programs, which are jointly funded by federal and state funding, provide access to medically necessary health services for eligible individuals.

3. Program Overview

a. Medicaid Eligibles

New Mexico’s Medicaid Program covers more than forty (40) eligibility categories. The major groups of individuals eligible for Medicaid are: individuals in households receiving cash assistance: aged, blind, and or disabled individuals receiving cash assistance (Supplemental Security Income [SSI]); certain aged, blind, and or disabled individuals requiring nursing home care; children under the jurisdiction of the state; pregnant women in households with incomes below 185% of the Federal Poverty Level (FPL); children up to age nineteen (19) in households with incomes below 235% of FPL; and adults under the Alternative Benefit Plan. The remainder of the categories are related to special circumstances and/or type of service needed.

As of SFY 2014, more than 500,000 individuals in New Mexico had Medicaid eligibility for at least part of the year.

b. Covered Services

Medicaid program regulations allow reimbursement for a broad array of healthcare services and providers. Mandated services include, but are not limited to: general acute inpatient hospital care; outpatient hospital services; physician services provided in a variety of settings; nurse midwives; nursing facility services for certain individuals; home health care; rural health clinic services including services in Federally Qualified Health Centers; laboratory and radiology; nurse practitioner services; and medically necessary Early Periodic Screening, Diagnostic, and Treatment (EPSDT) services. Optional services provided in New Mexico include, but are not limited to: HCBW services; prescription drugs; eyeglasses and hearing aids; organ transplants; dental services; physical, occupational and speech therapies; rehabilitative services; ICF/IID; case management; hospice; transportation services; durable medical equipment and supplies; prosthetic devices; and adult personal care option.

c. Administration of the Medicaid Program

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HSD/MAD works collaboratively with other state agencies in managing the Medicaid program. Specifically, it works with the Department of Health's (DOH) Developmental Disabilities and Supports Division (DDSD) to administer various HCBS waiver programs and with the Children, Youth, and Families Department (CYFD) in the administration of certain services for children.

A program to monitor and control utilization and detect fraud and abuse is operated by HSD/MAD's Program Policy and Integrity Bureau, HSD's Office of Inspector General, and the New Mexico Attorney General Medicaid Fraud and Elder Abuse Division.

d. Assistance of other State Contractors

HSD/MAD works collaboratively with contractors, vendors, and consultants, to provide certain services for the division. These other contractors include, but are not limited to: Centennial Care managed care organizations (MCOs); an External Quality Review Organization (EORO) vendor; a Third-Party Assessor; a fiscal intermediary contractor; a financial management agent for the Mi Via program; and various nationwide consultants familiar with Medicaid and other federally funded programs. At times, the successful Offerors will be required to work with these and other, appropriate contractors, vendors, or consultants.

e. Exempt Services and Programs Bureau (ESPB)

The ESPB manages the following programs: HCBS waivers for individuals with 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 these 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 TPA contract. The current TPA contract with Molina Healthcare of New Mexico, Inc. to perform TPA and utilization review functions ends on December 31, 2014.

The three (3) Medicaid HCBS waiver programs that fall under the scope of this procurement serve: individuals with DD and MF conditions and the Mi Via Self-Directed Waiver for individuals with DD and MF conditions.
The Mi Via Self-Directed waiver program is available to any person who is already a participant in or allocated a slot in one of the existing HCBS waivers. Mi Via is designed to assist participants in directing their home and community-based services, supports and goods within an approved plan and budget. Eligible participants have the option to direct and purchase services, supports and goods related to their disabilities, using the essential elements of person-centered planning, individual budgeting, participant protections, and quality assurance and quality improvement.

f. Centennial Care

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. 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. With the implementation of Centennial Care, the TPA activities being procured through this RFP will be managed separately from the Centennial Care health plans. The TPA, however, is expected to work collaboratively with the Centennial Care health plans for recipient program transition and coordination of services.

g. Medicaid Expansion

Effective January 1, 2014, the New Mexico Medicaid Expansion will provide 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.

C. SUMMARY SCOPE OF WORK

HSD requests proposals to improve third-party assessment and utilization review services through innovative and proven business and technical solutions for performing assessment and UR activities, meeting program requirements, and conducting administrative and system functions. HSD seeks an Offeror with the capacity, experience and expertise in HCBS traditional and self-direction models serving developmental disabilities and medically fragile populations; medical eligibility LOC determinations for long-term/institutional care; and medical necessity/prior authorization reviews for physical and behavioral health.

The successful Contractor is expected to commit to working with HSD to make adjustments or changes according to new requirements that may arise as a result of Centennial Care and other Medicaid healthcare reform initiatives.

D. SCOPE OF PROCUREMENT

The scope of the procurement shall encompass the requirements set forth in the professional services contract (Appendix F of this RFP). This procurement will result in a single source
award. The initial term of the contract is expected to be one (1) year, with optional additional three (3) years, renewed annually. In no case shall the contracts, including the renewals thereof, exceed a total of four (4) years in duration.

E. OFFEROR QUALIFICATIONS/CONFLICT OF INTEREST

This RFP is open to any Offeror capable of performing the work described in Section V, Technical Requirements, subject to the following stipulations:

- An Offeror shall be a Quality Improvement Organization (QIO) or a QIO-like entity approved by the CMS to perform medical and utilization review functions pursuant to section 1152 of the Social Security Act and 42 Code of Federal Regulations Part 475.

- Pursuant to the Governmental Conduct Act, NMSA 1978, 10-16-1 et. seq., an Offeror shall have no direct or indirect interest that conflicts with the performance of services covered under this RFP;

- Pursuant to NMSA 1978, § 13-19-191, § 30-24-2, and § 30-41-1 through § 30-41-3, an Offeror shall not provide or offer bribes, gratuities, or kickbacks to applicable State personnel;

- An Offeror shall ensure that it will comply with the New Mexico Governmental Conduct Act, NMSA 1978, 10-16-1 et seq.;

- An Offeror shall ensure that no elected or appointed officer or other employee of the State of New Mexico shall benefit financially or materially from the successful award of the contract to the Offeror and that no such individual shall be permitted to any share or part of the contract or to any benefit that may arise therefrom;

- An Offeror shall complete any and all required disclosure forms, including but not limited to campaign disclosure forms and other attestations; and

- The burden is on the Offeror to present sufficient assurance to HSD that awarding the Contract to the Offeror shall not create a conflict of interest.
F. PROCUREMENT MANAGER

HSD has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below:

Gina Capener  
Procurement Manager  
New Mexico Human Services Department  
Medical Assistance Division  
P. O. Box 2348  
Santa Fe, NM 87504-2348  
Phone: 505-476-7251  
Fax: 505-827-3138  
Email: HSD.TPA-UR-RFP@state.nm.us

For hand deliveries or express mail deliveries, the following address may be used:

Gina Capener  
New Mexico Human Services Department  
Medical Assistance Division  
Exempt Services Program Bureau  
Ark Plaza  
2025 South Pacheco Street  
Santa Fe, NM 87505

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of HSD.
G. DEFINITION OF TERMINOLOGY

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

ABP means the Alternative Benefit Plan that covers specific benefits and services similar to commercial insurance plans. ABP preventive services and treatment services are created through the Patient Protection and Affordable Care Act (ACA).

Abstract means the State long-term care assessment form submitted to the TPA to determine if a recipient meets the medical criteria, or level of care, to be in a nursing home or ICF/IID.

ADL means the activities of daily living. Activities of daily living are activities that reflect the client's ability to perform self-care tasks essential for sustaining health and safety such as dressing, grooming/bathing, eating, meal acquisition/preparation, transfer, mobility, toileting, and bowel/bladder control and management, and taking daily, essential prescription medication.

Adverse Determination means a determination that the Medicaid health care services furnished or proposed to be furnished to a recipient are not medically necessary or are not appropriate.

Agency means the Human Services Department.

Approval means a utilization review authorization based on the recipient meeting the clinical or state-approved criteria for the requested Medicaid service(s) or level of care.

Case means a household that Medicaid/MAD treats as a unit for purposes of eligibility determination; for example, a parent and child; a legal guardian and child; or a set of siblings.

COE means the category of eligibility that is assigned to recipients based on the program under which they have been qualified for Medicaid eligibility. The COE can determine the level of Medicaid benefits for which the client is eligible.

Centennial Care means HSD’s Section 1115 (a) demonstration Waiver effective January 1, 2014 that provides Medicaid services, including acute, behavioral health, certain home and community-based and long term institutional care (with the exception of the Development Disabilities and Medically Fragile waivers and other exempt programs that are specified in the waiver application) through a managed care system.

Claim means a bill for services, a line item of service, or all services for one member within a bill.

COB means Close of Business, which is 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

CMS means the federal Centers for Medicare and Medicaid Services (CMS).
Community-Based Care means a system of care that seeks to provide services to the greatest extent possible in or near the member’s home community.

Complaint means an expression of dissatisfaction expressed by a complainant, verbally or in writing.

Concurrent Review means a process of updating clinical information from a service provider regarding a recipient who is already receiving a covered service, to evaluate whether the service continues to be medically necessary. Continued stay or continued service reviews are concurrent reviews for medical necessity.

CA means a Medicaid-enrolled consultant agency that hires individual consultants to assist Mi Via waiver participants to plan and purchase services and supports within a State-approved budget.

CQI means a process for continuous quality improvement that assumes opportunities for improvement are unlimited; it is customer-oriented, data driven, and results in implementation of improvements; and requires continual measurement of implemented improvements and modifications of improvements, as indicated.

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

Contract Manager means the individual selected by HSD to monitor and manage all aspects of the contract resulting from this RFP.

Contractor means the party to the contract that will perform the task(s) outlined in the scope of procurement detailed in this request for proposals.

CAP means a corrective action plan developed by the TPA.

Critical Incident means a reportable incident that may include, but is not limited to, abuse, neglect or exploitation; death; environmental hazards; law enforcement intervention; or emergency services, and which encompasses the full range of physical health, Medicaid state plan, and home and community-based services.

Day means business day unless otherwise specified.

Delegation means a formal process that gives an entity the authority to perform certain functions on an entity’s behalf while retaining full accountability for the delegated functions.

Deliverable means any measurable, tangible, verifiable outcome, result, or item that must be produced to complete a project or part of a project.

Denial means the TPA decision to not authorize requested services or goods.

DOH means the Department of Health, the State Agency responsible for operating both the traditional and self-directed program models for the Medicaid Section 1915 (c) Home and
Community-Based Services (HCBS) Waiver programs for individuals with developmental disabilities or are medically fragile that meet the Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) level of care.

Developmental Disabilities Waiver category 096 means the Medicaid HCBS Waiver program designed to furnish services to applicants/recipients who meet the definition of a developmental disability and mental retardation or specific related condition as determined by the DOH and the Disability Determination Contractor (DDC) in accordance with the approved DD waiver criteria. The individual must also require the level of care provided in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), and meet all other applicable financial and non-financial eligibility requirements.

Disabled means an individual under 65, unable to engage in any substantial gainful activity because of a medically determinable physical, developmental or mental impairment which has lasted or expected to last for a continuous period of at least twelve (12) months and meets allowable resource standards.

Due Process means the performance of recipient or provider requested contestation of a denial, termination, suspension, modification or reduction of service through a provider reconsideration of a review decision or a recipient fair hearing.

Emergency means a medical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson with an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

Emergency Medical Services for Undocumented Aliens category 052 means coverage for emergency services for certain non-citizens who are undocumented or who do not meet qualifying immigration criteria but who meet all eligibility criteria for certain Medicaid categories or SSI.

Experimental, investigational, or unproven medical practice means any procedure, medication product, or service that is not proven to be medically efficacious for a given procedure; or that is performed for or in support of purposes of research, experimentation, or testing of new processes or products and are not covered Medicaid services.

Evaluation Committee means a body appointed by HSD management to perform the evaluation of Offeror proposals.

Evaluation Committee Report means a report prepared by the Procurement Manager and the Evaluation Committee for submission to the HSD Secretary for contract award that contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

Fee-For-Service (FFS) means the traditional Medicaid payment method whereby payment is made by HSD to a service provider after services are rendered and billed.
Finalist means an Offeror that meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high to qualify that Offeror for further consideration by the Evaluation Committee.

FMA means the Financial Management Agent that makes payment to employees for services rendered to the Mi Via participant. The FMA processes employee timesheets or invoices, and bills Medicaid for services and goods approved on the Service and Support Plan.

Fiscal Agent means the entity responsible for administering claims for the New Mexico Medicaid program.

Fraud means an intentional deception or misrepresentation made by an entity or person with the knowledge that the deception could result in some unauthorized benefit to himself or to some other previously described entity or person. It includes any act that constitutes fraud under applicable federal or state law.

FOCoS means the on-line system used by the Mi Via FMA for receiving and processing payments. FOCoS is also used by participants and consultants to develop and submit SSP/budget requests for TPA review.

Health Plan means a health maintenance organization (HMO), managed care organization (MCO), prepaid inpatient health plan (PIHP), or third party payor or their agents.

Hearing or Fair Hearing means an administrative hearing process that provides for an impartial review of HSD actions that adversely affect recipients and providers.

HIPAA means the Health Insurance Portability and Accountability Act of 1996.

Home and Community-Based Services (HCBS) Waiver means one or more of the State’s Medicaid home and community-based waiver programs approved by CMS under the authority of section 1915 (c) of the Social Security Act. HSD, with the DOH, has authority to develop and implement these programs for Medicaid applicants/recipients who meet both financial and medical criteria for an institutional level of care.

Human Services Department (HSD) means the sole executive department in New Mexico responsible for the administration of Title XIX (Medicaid).

ISD means the HSD Income Support Division.

IBA means the annual Individual Budgetary Allotment amount, available to each Mi Via participant that can be used to purchase flexible combinations of services, supports and goods as approved in the service and support plan (SSP).

Individualized Service Plan (ISP) means a treatment plan for a recipient that includes the recipient's needs, functional level, intermediate and long range goals, statement for achieving the goals, and specifies responsibilities for the care needs. The plan determines the services allocated to an individual within program allowances.
Institutional Care Medicaid categories 081, 083, and 084 means coverage for services furnished to individuals who require institutional care in an acute care hospital (ACH), nursing facility and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), swing bed or certified instate inpatient rehabilitation center. A level of care determination by the TPA is required (except for ACH) and the individual must meet all other applicable financial and non-financial eligibility requirements.

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) means facilities that are licensed and certified by the DOH to provide room and board, continuous active treatment and other services for eligible Medicaid recipients with a primary diagnosis of intellectual disability.

Letter of Allocation means written notice from the State Agency to the applicant to proceed with the HCBSW application process.

Letter of Direction (LOD) means a letter issued to the contractor by HSD/MAD giving specific direction concerning specific reviews, changes in the mix of review types, services to be reviewed, and other directions related to the scope of work.

Level of Care (LOC) means the level of care, or medical eligibility, needed by an individual that is provided in a nursing facility or ICF/IID.

Long-Term Services means a continuum of services and supports, ranging from in-home and community-based services for the elderly and individuals with disabilities who need help in maintaining their independence to institutional services for those who require an institutional care level of support.

LTC Span means the long-term care authorization span that is maintained in Omnicaid.

Mandatory means a required item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal. This term is used interchangeably with “must,” “shall,” “will”.

Medicaid means the medical assistance program authorized under Title XIX of the Social Security Act or its successors, furnished to New Mexico residents who meet specific eligibility requirements.

Medically Fragile (MF) Waiver category 095 means the HCBS waiver program for individuals diagnosed with a developmental disability, developmental delay or who are at risk for a developmental delay and diagnosed with a medically fragile condition before reaching 22 years old and who require an ICF/IID LOC and meet other defined criteria.

Medical necessity requirements means that the New Mexico Medicaid program reimburses providers for furnishing covered services to Medicaid recipients only when the services are medically necessary. Medical necessity is required for the specific service, level of care, and service setting, if relevant to the service.
Medically necessary services means clinical and rehabilitative physical or behavioral health services that are essential to prevent, diagnose or treat medical conditions or are essential to enable the individual to attain, maintain or regain functional capacity; are delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical, mental and behavioral health care needs of the individual; are provided within professionally accepted standards of practice and national guidelines; and are required to meet the physical and behavioral health needs of the individual and are not primarily for the convenience of the individual, the provider or the payer. A determination that a health care service is medically necessary does not mean that the health care service is a covered benefit or an amendment, modification or expansion of a covered benefit.

Mi Via means the HCBS waiver providing self-directed home and community-based services to eligible waiver recipients who are developmentally disabled or medically fragile, where eligible participants have the option to access Medicaid funds, using the essential elements of person-centered planning, individualized budgeting, participant protections, and quality assurance and quality improvement.

Nursing Facility (NF) means a Medicaid facility licensed and certified by DOH in accordance with 42 CFR 483 to provide inpatient room, board and nursing services to recipients who require these services on a continuous basis but who do not require hospital services or direct daily services from a physician.

Offeror means any person, corporation, or partnership that submits a proposal.

Omnicaid/Medicaid Management Information System (MMIS) means the New Mexico's Medicaid Management Information System. Omnicaid maintains provider and client eligibility information; processes and adjudicates claims; and issues remittance advices (RA) and payments.

Performance Improvement Plan (PIP) means a plan developed by the TPA to correct contract performance problems identified by HSD; a PIP precedes a CAP.

Person-centered planning means a process in which each consumer or participant is actively engaged, to the extent that the participant desires, in identifying their needs, goals and preferences, and in developing strategies to address those needs, goals and preferences.

Plan of Care (POC) means a written document including all medically necessary services to be provided for a specific recipient.

Prepayment Reviews means a utilization review conducted after services have been furnished and claims for payment have been filed by providers. If a service is either not a covered Medicaid benefit or not medically necessary, payment for that service will be denied.

Prior Authorization (PA) Review means the approved number of service units that a provider is authorized to furnish to a recipient and the date(s) the service(s) must be provided.

Procurement Manager means the person or designee authorized by HSD to manage or administer a procurement requiring the evaluation of competitive sealed proposals.
Program for All-Inclusive Care for the Elderly (PACE) program services means the New Mexico program that provides acute, long-term care, personal care and social services to a frail population that meets nursing facility clinical criteria.

Quality Improvement Organization (QIO) or QIO-like Entity means an organization approved by CMS as meeting the requirements in 1152 of the Social Security Act and 42 CFR Part 475.

QM/QI means quality management and quality improvement.

Recipient means an individual who has applied for and been determined eligible for Title XIX (Medicaid). A “recipient” may also be referred to as a “member”, “customer”, “consumer”, “participant”, or “client”.

Reconsideration means a request submitted by a provider who is dissatisfied with the medical necessity or level of care decision by the TPA.

Reduction of care means a utilization reviewed staff authorization of the type of service requested by the provider but in lesser amounts or units of service than were originally requested.

RFI means request for information, where a review decision is delayed due to lack of documentation, inability to contact parties involved or other reason which delays finalizing a determination.

RFP means request for proposals.

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

Responsible Offeror 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 or Responsive Proposal means an offer or proposal 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.

Retrospective review means reviews conducted after a claim has been processed and payment is made.

Self-Direction means Mi Via participants choose which services, supports and goods they need; when, where and how those services and supports will be provided; who they want to
provide them; and who they want to assist them with planning and managing their services and supports.

**Service and Support Plan (SSP)** means a plan that identifies the services, supports and goods identified by the participant to meet their functional, medical or social needs and advances the desired outcomes.

**Solicited and Awarded** means an Invitation to Bid (ITB) or RFP was made available to the general public, through any means, after January 1, 2008 AND the contract(s) sought as a result of that solicitation was/were awarded after January 1, 2008.

**Solicitations** means ITBs and RFPS.

**State Plan** means a statewide plan for Medicaid services submitted for approval to CMS under Title XIX of the federal Social Security Act.

**Subcontract** means a written agreement between a contractor and a third party, or between a subcontractor and another subcontractor, to provide services.

**Subcontractor** means a third party who contracts with a contractor or a subcontractor for the provision of services.

**Summary of Evidence (SOE)** means the packet completed by the contractor for a client’s Fair Hearing proceedings that contains documentation of all related review information, medical records, forms, and policies that were relied on in making an adverse determination.

**Termination** means the utilization review decision made during a concurrent review that yields a denial based on the current service being no longer medically necessary.

**Third Party Assessor** means the TPA or MAD’s designee that is responsible for performing the activities outlined within this RFP.

**Third Party Liability (TPL)** means commercial or private insurance. If a Medicaid client has TPL, that company is the primary insurer.

**Urgent Condition** means acute signs and symptoms that, by reasonable medical judgment, represent a condition of sufficient severity such that the absence of medical attention within 24 hours could reasonably be expected to result in an emergency condition.

**Utilization Review** means a system for reviewing the appropriate and efficient allocation of health care services or level of care given or proposed to be given to a recipient.
H. PROCUREMENT LIBRARY

The Procurement Manager has established a Procurement Library that can be accessed online at: www.hsd.state.nm.us/mad/rfps.html. Offerors are encouraged to use the Department website for additional information. The library includes electronic documents and web links.

All statistical data provided by HSD in regards to the RFP represents the best and most accurate information available to HSD at the time this RFP was prepared. It is the Offeror’s responsibility to take into consideration normal volume increases during the contract period.

The Procurement Library contains the information listed below:

HSD:

1. Medical Assistance Division Program Policy Manual:
   http://nmhsd.sks.com/providers/rules-nm-administrative-code-.aspx
   • Prior Authorization and Utilization Review
   • Developmental Disabilities HCBS Waiver
   • Mi Via HCBS Waiver
   • Medically Fragile HCBS Waiver
   • ICF-IID (MR) Provider
   • EMSA
   • PACE
   • Reconsiderations of Utilization Reviews
   • Recipient Hearings
   • Behavioral Health
   • ABP
   • DME, Vision, and Hearing
   • EPSDT
   • Dental Services
   • EMSA
   • Hospital Services
   • Home Health Services

2. Alternative Benefit Plan (ABP):
   http://www.hsd.state.nm.us/LookingForInformation/client-co-payments.aspx

3. NM Home and Community-Based Services Waivers:
   http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/Waivers.html?filterBy=1915 (c) #waivers
   • Medically Fragile Waiver
   • Developmental Disability Waiver
   • Mi Via Waiver

4. ICF/IID Admission Criteria:
   http://www.hsd.state.nm.us/LookingForInformation/enrollment-and-program-policy.aspx
5. Client Eligibility & Privacy:
   http://www.hsd.state.nm.us/LookingForInformation/enrollment-and-program-policy.aspx

6. Medicaid Eligibility Enrollment Reports:
   http://www.hsd.state.nm.us/LookingForInformation/medicaid-eligibility.aspx

7. HSD Proposed Registers:
   http://www.hsd.state.nm.us/LookingForInformation/registers.aspx

8. Molina Health Care Third Party Assessor (TPA) 2014 Contract & Amendments – Available on website:
   http://www.hsd.state.nm.us/LookingForInformation/medical-assistance-division.aspx

9. Letters of Direction Molina/TPA – Available in hard copy

10. List of Income Support Division Offices:
    http://www.hsd.state.nm.us/LookingForAssistance/Field_Offices_1.aspx

11. Mi Via Website:
    http://www.mivianm.org/

**Forms:**

12. MAD 379, PACE Medical Assessment:
    https://nmmedicaid.acs-inc.com/static/ProviderInformation.htm#FormsPubs

13. MAD 378, ICF/IID and Developmental Disabilities Home & Community Based Services Waiver Long Term Care Assessment Abstract:
    https://nmmedicaid.acs-inc.com/static/ProviderInformation.htm#FormsPubs

14. Mi Via History & Physical:
    https://nmmedicaid.acs-inc.com/static/ProviderInformation.htm#FormsPubs

15. DOH 378, Medically Fragile Long Term Care Assessment Abstract:
    (Form available in hard copy)

**State:**

16. Procurement Code NMSA 1978 Section 13:

17. Regulation 1.4.1 NMAC – State Procurement Code Regulations:
    http://www.nmecpr.state.nm.us/nmac/parts/title01/01_004.0001.htm

19. County NM Codes:  

20. New Mexico Record Retention and Disposition Schedule for Medical Records:  
http://www.nmecpr.state.nm.us/nmac/parts/title01/01.015.0008.htm

21. New Mexico Description of Public Records:  
http://www.nmecpr.state.nm.us/nmac/parts/title01/01.013.0030.htm

22. Lewis et al. v. NM Dept of Health et al. [PDF #24a, b, c] Available in hard copy.

**Federal:**

23. Code of Federal Regulations, Title 42- Public Health, Chapter IV- Centers for Medicare and Medicaid Services:  
http://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2011&page.go=G

24. Quality Improvement Organization (QIO):  

25. Social Security Act – Volume I (Title XVI):  
http://www.ssa.gov/OP_Home/ssact/title16b/1600.htm

26. Social Security Act – Volume I (Title IVE):  
http://www.ssa.gov/OP_Home/ssact/title04/0400.htm

27. Social Security Act – Volume I (Title XIX):  
http://www.ssa.gov/OP_Home/ssact/title19/1900.htm

28. Individuals with Disabilities Education Act:  
http://www2.ed.gov/offices/OSERS/Policy/IDEA/the_law.html

Other documents that may be relevant to the procurement are available as follows:

1. Patient Protection and Affordable Care Act, P.L. 111-148 – Available on Website:  
http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/content-detail.html

2. Centennial Care – Available on Website: – Available on website:  
http://www.hsd.state.nm.us/CentennialCare/index.html

Items not available online will be available in hard copy in the Medical Assistance Division Building located at 2025 South Pacheco, Santa Fe, New Mexico 87505. Offerors are encouraged to review the materials contained in the online Procurement Library, or when necessary, to
contact the Procurement Manager and schedule an appointment to view hard copy materials. Offerors are welcome to take notes in the Procurement Library, however all materials are available for review only and may not be copied or removed from the library. Other copies will not be made available.
II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement.

A. SEQUENCE OF EVENTS

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

<table>
<thead>
<tr>
<th>Action</th>
<th>Responsibility</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Issue of RFP</td>
<td>Agency</td>
<td>February 25, 2014</td>
</tr>
<tr>
<td>2. Pre-Proposal Conference</td>
<td>Agency</td>
<td>March 5, 2014</td>
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<tr>
<td>3. Distribution List Response</td>
<td>Potential Offerors</td>
<td>March 5, 2014</td>
</tr>
<tr>
<td>6. Deadline for Submission of Proposal</td>
<td>Offerors</td>
<td>April 1, 2014</td>
</tr>
<tr>
<td>8. Selection of Finalists</td>
<td>Evaluation Committee</td>
<td>April 11, 2014</td>
</tr>
<tr>
<td>9. Best and Final Offers from Finalists</td>
<td>Offerors</td>
<td>April 17, 2014</td>
</tr>
<tr>
<td>10. Oral Presentation by Finalists (At HSD’s Discretion)</td>
<td>Offerors/Evaluation Committee</td>
<td>April 23-24, 2014</td>
</tr>
<tr>
<td>13. Protest Deadline</td>
<td>Offerors</td>
<td>15 days following the contract award</td>
</tr>
<tr>
<td>14. Effective Date of Contract (Approximate)</td>
<td>Agency</td>
<td>July 1, 2014</td>
</tr>
</tbody>
</table>

B. EXPLANATION OF EVENTS

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

1. Issue of RFP

This RFP is being issued by HSD/MAD. Potential Offerors may obtain a copy of the RFP from the Procurement Manager. The RFP may also be obtained from the HSD/MAD website at http://www.hsd.state.nm.us/LookingForInformation/open-rfps.aspx

2. Pre-Proposal Conference

A pre-proposal conference will be held to give Offerors an opportunity to ask questions and clarify issues concerning this RFP. It will be scheduled for March 5, 2014, from 9:00 am to 10:00 am at the following location:

Medical Assistance Division
Tele-conference will be offered. Potential Offeror(s) should call 1-888-394-8197 and use Participant code 705251.

Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager. 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 at the conference. A public log will be kept of the names of potential Offerors that attended the pre-proposal conference.

Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

3. Distribution List Response

Potential Offerors should hand deliver or return by facsimile or by registered or certified mail the “Acknowledgement of Receipt Form” that accompanies this document (See Appendix A) to have their organizations placed on the procurement distribution list. This form should be signed by an authorized representative of the organization, dated, and returned on the date listed in the Sequence of Events in Section II, Paragraph A. All written questions must be addressed to the Procurement Manager (see Section I Paragraph F.)

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror’s organization name shall not appear on the distribution list.

4. Deadline to Submit Additional Questions

Potential Offerors may submit additional written questions as to the intent or clarity of this RFP on the date listed in the Sequence of Events in Section II, Paragraph A. All written questions must be addressed to the Procurement Manager (see Section I, Paragraph F). Questions shall be clearly labeled and shall cite the Section(s) in the RFP, or other document which form the basis of the question.

5. Response to Written Questions/RFP Amendments

Written responses to written questions and any RFP amendments will be distributed on the date listed in the Sequence of Events in Section II, Paragraph A to all potential Offerors whose organization name appears on the procurement distribution list. HSD shall make every effort to meet this timeline or provide answers as close to the deadline as possible.
An Acknowledgement of Receipt Form will accompany the distribution package. The form should be signed by the Offeror's representative, dated, and hand-delivered or returned by facsimile or by registered or certified mail by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt and withdrawal from the procurement process. Therefore, the Offeror's organization name shall be deleted from the procurement distribution list.

6. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 2:00 pm MOUNTAIN DAYLIGHT TIME AS LISTED IN THE SEQUENCE OF EVENTS IN SECTION II, PARAGRAPH A. 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 F. Proposals must be sealed and labeled on the outside of the package to clearly indicate a response to the “Third Party Assessment” Request for Proposals. Proposals submitted by facsimile will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

7. Proposal Evaluation

The evaluation of proposals will be performed by an evaluation committee appointed by Agency management. The evaluation process will take place as listed in the Sequence of Events in Section II, Paragraph A. During this time, the Procurement Manager may, at her option, initiate discussion with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select finalists and the Procurement Manager will notify the finalist Offerors as listed in the Sequence of Events in Section II, Paragraph A. Only finalists will be invited to participate in the subsequent steps of the procurement.

9. Best and Final Offers From Finalists

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers as listed in the Sequence of Events in Section II, Paragraph A, NO LATER THAN 2:00 pm MOUNTAIN DAYLIGHT TIME. Best and final offers may be clarified and amended at the finalist Offeror’s oral presentation/demonstration.

10. Oral Presentation/Demonstration by Finalists

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At HSD's discretion, finalist Offerors may be required to present their proposals and respond to Evaluation Committee questions as listed in the Sequence of Events in Section II, Paragraph A. HSD reserves the right to extend the time at its sole discretion. All oral presentations will be held in Santa Fe, New Mexico. Finalist Offerors will be limited to duration of presentation of not more than one (1) hour.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror as listed in the Sequence of Events in Section II, Paragraph A. In the event that mutually agreeable terms cannot be reached within the time specified, HSD reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or to cancel the award.

12. Contract Award

After review of the Evaluation Committee Report, the recommendation of HSD management, and the signed contract, HSD will award the contract as listed in the Sequence of Events in Section II, Paragraph A. This date is subject to change at the discretion of HSD.

This contract shall be awarded to the Offeror whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978 §13-1-172 and applicable procurement regulations. The fifteen (15)-day protest period for Responsive Offerors shall begin on the day following the Contract Award and will end as of 5:00 PM Mountain Daylight Time fifteen (15) days after the Contract Award. Protests must be written and must include protestor's name and address and the RFP number. The protest must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must specify the ruling requested. The protest must be delivered to the HSD Protest Manager:

Danny Sandoval, ASD Director
Administrative Services Division
Human Services Department
P.O. Box 2348
Santa Fe, N.M. 87504-2348

All deliveries via express carrier should be addressed as follows:

Danny Sandoval, ASD Director
Administrative Services Division
Human Services Department
1474 Rodeo Road
Santa Fe, N.M. 87505

Protests received after the deadline will not be accepted. The State reserves the right to implement the terms of the Contract with successful Offerors during the pendency of the protest.

C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with the Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-99 and the Procurement Regulations, 1.4.1 NMAC.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the conditions governing the Procurement in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section VII of this RFP.

2. Incurring Cost

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

3. Prime Contractor Responsibility

Any contract that may result from the RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with HSD. HSD will make contract payments only to the prime contractor.

4. Subcontractors

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The prime contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

5. Amended Proposals

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

6. Offeror’s Rights to Withdraw Proposal
Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative 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, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “proprietary” or “confidential” subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspections of the non-confidential portion of the proposal. Confidential data are normally restricted to confidential financial information concerning the Offeror's organization and data that qualify as a trade secret in accordance with the Uniform Trade Secrets Act [§57-3A-1 to 57-3A-7 NMSA 1978]. 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, HSD's Procurement Manager shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

9. No Obligation

The procurement in no manner obligates the State of New Mexico or any of its agencies to the eventual rental, lease, purchase, etc., of any equipment, software, or services offered 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 if HSD 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 the RFP process may be terminated if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the contractor. HSD’s decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

HSD requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns must be promptly brought to the attention of the Procurement Manager.

13. Governing Law

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

14. Basis for Proposal

Only information supplied by HSD in writing 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 HSD and a contractor will follow the format specified by HSD and contain the terms and conditions set forth in Appendix F, “Agreement Terms and Conditions.” However, HSD reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror’s proposal will be incorporated into and become part of the contract.

Should an Offeror object to any of HSD’s terms and conditions, as contained in this Section or in Appendix F, that Offeror must propose specific alternative language. HSD may or may not accept the alternative language. General references to the Offeror’s terms and conditions or attempts at complete substitutions are not acceptable to HSD 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.

16. Offeror’s Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with HSD.
17. Contract Deviations

Any additional terms and conditions that may be the subject of negotiation will be discussed only between HSD and the selected Offeror 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 Offeror to adhere to the requirements specified within this RFP. The Evaluation committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in §13-1-83 and §13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice

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

22. HSD Rights

HSD reserves the right to accept all or a portion of an Offeror’s proposal including the right to purchase software or services from SPA approved price agreements.

23. Right to Publish

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

24. Ownership of Proposals
All documents submitted in response to the RFP will become the property of HSD and 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 HSD.

The Contractor(s) agree 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/RFP Amendments).

27. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the HSD, the version maintained by the HSD shall govern.

28. Lobbying

No federally appropriated funds can be paid at any time by or on behalf of the Contractor or any other 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 in connection with the awarding of any federal contract, or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person 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 in connection with this federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

29. New Mexico Employees Health Coverage
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 twenty (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 http://www.insurenewmexico.state.nm.us/default.aspx

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

30. Campaign Contribution Disclosure Form

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

31. Pay Equity Reporting Requirements

1. Offeror agrees that if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification it will complete and submit the required reporting form (PE 10-249) if they are awarded a contract.

2. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) year, Offeror must also agree to submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the contract.
3. 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, offer must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.

4. Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than ten percent (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.”

32. Conflict of Interest; Governmental Conduct

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

Failure to conform to format and organization may lead to disqualification of any submitted proposal.

A. NUMBER OF RESPONSES

Offerors shall submit only one (1) proposal. Alternative proposals will not be accepted. A compliant proposal includes the following: 1) a Mandatory Requirements proposal, 2) a Technical Requirements proposal, and 3) a Cost proposal.

B. NUMBER OF COPIES

Offerors shall provide one (1) original hardcopy proposal plus five (5) complete and identical photocopies for a total of six (6) copies. The original proposal must contain original signatures and be marked “Original”. The hardcopy submission must also include 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. Proposals must be submitted to the location specified in Section I, Paragraph F on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 ½” x 11” paper, paginated, and placed in sturdy binders with tabs delineating each section. The pages should have one-inch margins, and the font size shall be no smaller than Times New Roman 12. Larger paper (up to 11” x 17”) and smaller fonts are permissible for charts, spreadsheets, diagrams, etc. The outside of each binder must identify the Offeror, specify that the offer is in response to RFP # 14-630-8000-0003, and specify the binder as: 1) Mandatory Requirements; 2) Technical Requirements; 3) Cost Proposal; and, 4) (optional) Exhibits for Technical Requirements, as applicable.

D. PROPOSAL ORGANIZATION

All proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror’s ability to meet the requirements of this RFP. Proposals must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

The entire proposal shall be submitted in a total of three (3) binders consisting of: 1) Mandatory Requirements, 2) Technical Requirements, and, 3) Cost Proposal. As an option, the Offeror may also submit an additional Exhibits binder for the Technical Requirements proposal.

Within each section of their proposal, Offerors shall address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must occur only in the Cost Proposal.
Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

Each binder must include the following:

Table of Contents
The first page of each binder must be the table of contents. It must contain a list of all sections of the proposal in the binder and the corresponding page numbers.

Page Numbers
The pages in each binder must be numbered sequentially and include the proposal type (e.g. Mandatory Response – pg. 1).

Dividers
Each section of each binder shall be separated by a divider and contain all information requested in this RFP.

Each proposal must adhere to the following specifications:

1. Mandatory Requirements – this binder shall have dividers separating the following sections:
   - Letter of Transmittal
   - Proposal Summary
   - Compliance and Acceptance Statement
   - Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
   - Campaign Contribution Form
   - New Mexico Employees Health Coverage
   - Business Associates Agreement
   - References

2. Technical Requirements – this binder shall have dividers separating the following sections:
   - Implementation
   - Administration and Operations
     - General Expectations – Organizational Capacity and Support
     - General Expectations – Other Related Administrative Responsibilities
     - General Expectations – Quality Assurance
     - General Expectations – Program Integrity
     - General Expectations – Management Information Systems
     - General Expectations – Reporting
     - General Expectations – Due Process
     - General Expectations – Recipient and Provider Services
   - Program Services/Utilization Reviews
     - Medical Eligibility/Level of Care
     - HCBS Waivers ISP/SSP and Budgets
3. **Cost Proposal** – this binder shall have dividers separating the following sections:
   - Option 1
   - Option 2

Both sections shall include a completed Cost Proposal Form (see section VI. C.).

4. **(Optional) Exhibits for Technical Requirements** – this binder shall have dividers separating other supporting technical requirements material.
IV. MANDATORY REQUIREMENTS

A. LETTER OF TRANSMITTAL
   The mandatory requirements binder must include a signed Letter of Transmittal. (See Appendix B of this RFP.)

B. PROPOSAL SUMMARY
   The proposal summary must be two (2) pages or less. It shall provide the Evaluation Committee with an overview of the technical and business features of the proposal. The material will not be used in the evaluation process but may be used in public notifications regarding the selection of a successful Offeror.

C. COMPLIANCE AND ACCEPTANCE STATEMENT
   The mandatory requirements binder shall include a signed statement that explicitly indicates acceptance of the Conditions Governing the Procurement stated in Section 2 of this RFP and the Offeror’s agreement to comply with all requirements as described in this RFP, including all appendices, attachments, written clarifications, and amendments provided during the procurement process. If the Offeror is unwilling to comply with any terms, conditions, or other requirements of this RFP, the Offeror shall clearly describe any deviations from the terms, conditions, or requirements, and shall include a complete explanation of alternative terms and the reasons such deviations are proposed.

D. CAMPAIGN CONTRIBUTION DISCLOSURE
   The Offeror must complete the Campaign Disclosure form (See Appendix D of this RFP.)

E. NEW MEXICO EMPLOYEES HEALTH COVERAGE
   The Offeror must agree with the terms and submit a signed New Mexico Employees Health Coverage Form with the submittal of their proposal. (See Appendix E of this RFP.)

F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS
   The Offeror must complete the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters form to certify compliance with federal regulations relating to suspension and debarment. (See Appendix G of this RFP.)

G. HIPAA BUSINESS ASSOCIATES AGREEMENT (See Appendix H of this RFP.)

H. REFERENCES
   The Offeror must submit a minimum of three (3) references.
V. TECHNICAL REQUIREMENTS

The Offeror must be in good standing with the State of New Mexico. Failure to respond to Technical Requirements will result in the disqualification of the proposal as non-responsive.

The Offeror is required to respond in narrative form to each of the numbered technical requirements in section V below. While the proposal should be as concise as possible, it 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 technical requirement item. The narratives along with required attachments will be evaluated and awarded points accordingly.

A. IMPLEMENTATION

The Offeror shall work closely with HSD to develop an HSD-approved comprehensive work plan prior to the actual beginning of contract operations to ensure a smooth transition from the incumbent Contractor to the successful Offeror. It is anticipated that implementation may begin as early as the contract award date.

1) The Offeror shall create and submit a comprehensive work plan that must include a narrative that provides an overview of the approach that will result in an orderly transition of responsibilities and files, to include: all work in progress from the incumbent Contractor (outstanding reviews, hearings, etc.); any assumptions or constraints identified by the Offeror; and recommendations to handle potential or actual problems. The work plan must identify key tasks and transition issues to be completed and/or addressed before contract operations, with estimated timeframes, milestones, responsible parties and deliverables.

2) The Offeror shall describe how it will work with HSD and the incumbent Contractor to establish an approved secure file transfer of all data including, at a minimum, both electronic and hard copies of recipient and provider files and records.

B. ADMINISTRATION AND OPERATIONS

The Offeror shall perform all work associated with this contract in the United States, with an established office in New Mexico, preferably in Albuquerque or Santa Fe, and shall ensure a business operation capable of meeting all requirements detailed in this RFP. This includes a sufficient number of qualified administrative and professional staff to carry out the requirements detailed in this RFP in a timely, efficient, high quality, and cost-effective manner. The Offeror shall explicitly state whether a subcontractor(s) will be used and provide the name(s) of the subcontractor(s) in the response.

B1. General Expectations – Organizational Capacity and Support

1) Provide the organizational chart of the entire agency. Identify and include an explanation of the functions of key staff, lines of reporting, and operating units pertaining to the execution of the scope of work detailed in this RFP.
2) Include names, job titles, job descriptions and qualifications of all key staff, including a TPA contract manager, who will be responsible for completing work related to the service components outlined in this RFP. 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.

3) Include copies of resumes and appropriate professional licenses and/or certifications and training.

4) Describe how the Offeror will maintain a level of work performance consistent with high professional standards in the industry, assuring that all employees assigned to perform work described in this RFP will be capable, efficient and no less qualified than other employees of the contractor performing the same or similar work.

5) For the staff that will be working with the DD and MF reviews, describe how the Offeror will ensure that staff (including professional and paraprofessional positions) have the minimum qualification of at least one (1) year of experience working in the field of intellectual disability or with other disability populations.

6) The Offeror must provide three (3) business client references with at least one for a state Medicaid program or similar government or public sector project within the last five (5) years that has received similar services to those proposed for this contract. If the Offeror proposes to use subcontractors for significant portions of the scope of work, the Offeror shall provide an additional three (3) external references for each subcontractor, if applicable. Each reference must include the name of the company, name of the contact person, telephone number, email address, the period of service and description of the services provided.

7) Provide documentation of the Offeror’s current designation as a QIO or QIO-like entity and describe activities to maintain this designation during the term of this contract. If the Offeror is not a QIO or a QIO-like entity, the Offeror must be in active pursuit in obtaining such status. The Offeror will be required to furnish such documentation to indicate its active pursuit by no later than the effective date of the contract.

8) List any pending lawsuit or bankruptcy petitions, any lawsuit or bankruptcy that has been concluded within the last five years, or any current investigation of the Offeror, its parent, affiliates, or subsidiaries that may be relevant to the operation of this program. Include a brief description of each item listed.

9) For any of the Offeror’s contracts, has the other contracting party notified the Offeror that it has found the Offeror to be in breach of the contract? (The Offeror shall provide the required information for all public sector contracts (including, but not limited to, Medicaid, Medicare, and public employees) as well as any non-public sector contracts that cover more than 50,000 lives.)

If yes:
   a. Provide a description of the events concerning the breach, specifically addressing the issue of whether or not the breach was due to factors beyond the Offeror’s control.
b. Was a corrective action plan (CAP) or its equivalent imposed? If so, describe the steps and timeframes in the CAP and whether the CAP was completed.

c. Was a sanction imposed? If so, please describe the sanction, including the amount of any monetary sanction (e.g., penalty or liquidated damage).

d. Was the breach the subject of an administrative proceeding or litigation? If so, what was the result of the proceeding/litigation?

10) Provide the Offeror’s most recently audited financial report as well as those for the preceding three (3) years. Include the parent company’s most recently audited financial reports, if applicable. In addition, provide the Offeror’s two (2) most recent internally prepared quarterly financial statements with preparation dates indicated. Include the parent company’s two (2) most recent reports, if applicable. For all of 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.

11) If the Offeror is a Centennial Care MCO, describe how the Offeror will operationalize a business model for a separate entity including, but not limited to, operations and staffing, IT systems, and network firewalls.

B2. General Expectations – Other Related Administrative Responsibilities

12) Describe the Offeror’s process for monthly invoicing to HSD monthly as well as the ability to submit claims electronically. HSD has the right to audit billing and payments and to adjust invoices or portions thereof.

13) Describe the Offeror’s capacity to produce, within one (1) business day of the request, all documentation for any specific review conducted within one (1) year of the request and, for older reviews that may be in storage off-site, the capacity to produce the documentation within five (5) business days.

14) Describe how the Offeror will ensure full responsibility for public records retention and disposition in accordance with state and federal rules for medical records. This may include contracting with a storage facility that is able to store and destroy medical records per state rules or converting paper documents to electronic versions.

15) Describe how the Offeror will coordinate services and TPA/UR information for clients transitioning between FFS and managed care with other Medicaid contractors, such as the Centennial Care MCOs. Provide sample agreements or documents that the Offeror might use to meet the goal of coordination.

16) Demonstrate evidence of the Offeror’s expertise and experience regarding the provision of services for individuals with intellectual disabilities that receive services from the programs identified within this RFP, including experience working directly with recipients, their families/authorized representatives, and other supports such as case managers, consultants, or service coordinators.
17) Describe how the Offeror will coordinate with HSD, DOH and stakeholder groups on the successful implementation of the scope of work described in this RFP and related program changes.

18) Describe how the Offeror will approach attending and actively participating in Mi Via meetings, waiver meetings, other meetings and ad hoc conference calls as requested by HSD/MAD, and to provide input on issues as requested.

19) Describe how the Offeror will coordinate as necessary with DOH and other Medicaid program contractors, including the Centennial Care MCOs, to ensure participant and provider questions are appropriately directed.

20) Demonstrate evidence of the Offeror’s expertise and experience regarding behavioral health services, including experience working directly with recipients, their families/authorized representative, and providers.

B3. General Expectations – Quality Assurance

The Offeror is expected to function as a partner to HSD/MAD to achieve compliance including availability to attend meetings, providing input, and problem-solving on the quality of contract-related issues. All of the Offeror’s activities described in this RFP must be based on a model of Continuous Quality Improvement (CQI) through which the Offeror can identify any quality problems quickly and remedy them in a prompt, effective manner, which reflects an understanding of the needs of the customers who are served by the system, and identifies and defines measures of success. Audits are a means of evaluating quality and identifying opportunities for quality improvement and/or interventions by the Offeror. HSD/MAD holds the Offeror accountable for achieving these standards and demonstrating their ability to meet HSD/MAD’s quality standards.

21) Describe how the Offeror will comply with HSD’s quality standards in areas of staffing, procedures, review criteria, regulatory standards, and internal quality management.

22) Include evidence of other quality indicators of providing high quality services for the target or similar population.

23) Describe the Offeror’s internal compliance program with regard to the scope of work detailed in this RFP to demonstrate the Offeror’s capacity to develop and execute a Quality Management/Quality Improvement (QM/QI) program and/or Continuous Quality Improvement program.

24) Describe how the Offeror will meet the HSD requirements to submit an annual QM/QI report that is based on quarterly internal Inter-Rater Reliability reviews, or a similar performance-measurement tool involving a comparison of responses of reviewers by review type and program criteria and standards.

25) Describe the Offeror’s grievance procedures for the TPA line of business and how customers will be notified of these procedures. Include written procedures, if available.
26) Describe how the Offeror will monitor grievances by recipients and providers for evidence of trends. Describe mechanisms for communicating the results of quality evaluations with providers, recipients and HSD/MAD.

27) Describe how the Offeror will incorporate relevant grievance data and information into the QM/QI program plan to improve the Offeror’s operational performance.

28) Describe the Offeror’s internal compliance program with regard to federally-required desk and on-site HSD audits of TPA/UR performance and quality assurances.

29) Describe how the Offeror will proactively address feedback received by HSD to monitor and ensure completion of key issues and tasks identified.

30) Describe the Offeror’s procedure to achieve compliance in the event that a deficiency has been identified and noncompliance results in a Corrective Action Plan and/or sanction.

B4. General Expectations – Program Integrity

HSD/MAD is dedicated to preventing, detecting and addressing fraudulent and/or abusive billing practices in the Medicaid program. The Medicaid Integrity Program requires collaboration between the State and Offeror to review activities of providers, perform audits, identify overpayment and educate providers and members about false claims.

31) Describe the Offeror’s internal program to prevent, detect, investigate and report suspicious activity or potential fraud or abuse. Include applicable policies and procedures, standard operating procedures or its equivalent.

32) Describe how the Offeror will ensure compliance with all Federal and State laws, rules, regulations and executive orders 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 ensure 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, age, disability or religion.

33) Describe how the Offeror will ensure compliance with the Americans with Disabilities Act (ADA) within its own operations and by its subcontractors and providers.

34) Describe how the Offeror will ensure compliance with all applicable New Mexico Regulations, including HSD and Medicaid standards, rules, regulations and policies.

B5. General Expectations – Management Information Systems

The Offeror is responsible for maintaining a Management Information System (MIS) that is sufficient to meet the system requirements outlined in this RFP. The Offeror must be able to produce, read and exchange electronic files from HSD/MAD’s personal computer (PC) application software for word processing, electronic spreadsheets, and database management and submit information electronically using HSD/MAD’s FTP site. The Offeror is responsible for receiving, testing and reporting the accuracy of all data transfers between the Offeror and HSD/MAD. This includes interfacing and/or direct transmission with the Omnicaid, FOCoS and ASPEN systems according to guidelines that will be provided by HSD regarding entry of utilization reviews, ISP/SSP's and budgets, and level of care. The Offeror must demonstrate that it has or will have system capabilities (including but not limited to: data
management systems, hardware and software capabilities, qualified and trained personnel and technical support, and data reporting requirements) to collect, maintain, and manage all data elements and to perform all required processes. The Offeror is further responsible for ensuring that its subcontractors have sufficient systems capability to meet HSD/MAD’s system requirements. The Offeror is also expected to maintain a website for dispersing and receiving information to/from providers and clients.

35) Describe the Offeror’s detailed process for submitting, receiving, testing and reporting the accuracy of all data transfers between the Offeror and HSD (MMIS/Omnicaid and ASPEN).

36) Demonstrate the Offeror’s MIS including its tracking, reporting and interface capabilities.

37) Describe the hardware, software, and information resources that will be used by the Offeror to meet all of the system requirements outlined in this RFP. In the description of resources, include a description of key Information Systems (IS) staff, their qualifications, and their responsibilities and how they interface with other divisions within your organization and with subcontractors.

38) Describe the Offeror’s available technical support resources that will ensure that the effects of major system malfunctions will be minimized.

39) Describe the Offeror’s detailed process to capture, store, and report all pertinent information related to requests for level of care determinations including, but not limited to: date of request, requesting party, communication to recipient, date assessment/reassessment performed, due date of next reassessment, transmission of determination to requesting party, re-assessment due dates, and identification of overdue re-assessments.

40) Describe the Offeror’s capability to allow HSD limited access to the Offeror’s utilization review system for the ability to check the status of a review or request.

41) Describe the Offeror’s capability to communicate with HSD and DOH via the Internet using a secure internal transfer site for both email and files transfers.

42) Describe the Offeror’s staff initial and ongoing training plan for data entry requirements for Omnicaid and FOCoS systems.

43) Describe the hardware, software or other resources that will be used by the Offeror to ensure accuracy of entries and reconcile records (including level of care, care plans and budgets) with Omnicaid and FOCoS systems.

44) Describe the Offeror’s plan for collaboration with the providers and the Medicaid Fiscal Agent in ensuring the use of accurate NPI numbers, and where not available, Medicaid Provider numbers.

45) Describe the Offeror’s capacity to receive, maintain and retain or store secure electronic and hard copy records including clinical and financial data for a total of ten (10) years unless transfer is specifically directed by HSD.

46) Describe the Offeror’s MIS change control process for changes in the type of data collected, e.g., adding new required fields.

47) Describe how the Offeror will provide technical assistance to providers to ensure that accurate and valid data is collected and reported.
48) Describe the Offeror’s plan to control and limit access to the Omnicaid system for TPA/UR business operations only.

49) Describe the Offeror’s system backup and recovery plan.

B6. General Expectations – Reporting

The Offeror shall be responsible for providing reports as required by HSD/MAD. Every report shall be accompanied by an explanation of the reported data elements and an analysis signed off by the responsible Offeror staff member. The reports shall be reviewed for timeliness, accuracy and completeness. If applicable, HSD/MAD shall provide a format that must be used.

50) Describe the Offeror’s data analytic capabilities for reporting, analysis, and evaluation including:

   a. Capability to produce system-generated reports for, at a minimum, due process (fair hearings, agency conferences and reconsiderations), level of care, prior authorizations, budgets, ISP/SSPs, RFI, and recipient and provider services;
   b. How the Offeror handles requests for ad hoc reports;
   c. Staffing levels, skills and team structure available for data collection, reporting, analysis, and application of problem solving and process improvements; and,
   d. Processes to be implemented to ensure accuracy and timeliness of reports.

51) Describe the Offeror’s capacity to produce required Routine Recurring Reports and Ad Hoc Reports and allow the primary reviewer access to the entire utilization review history of a recipient in order to monitor LOC determinations, ISP/SSP and budgets, detect medically unnecessary duplications of service and/or significant disruptions in the continuity of care.

B7. General Expectations – Due Process

The Offeror shall be responsible for carrying out Medicaid due process requirements for recipients and providers. This includes preparing and sending notice of adverse action decisions and due process rights, including continuation of benefits, to recipients; processing provider reconsideration reviews; collaborating with HSD and/or DOH on agency conferences; preparing and submitting complete summaries of evidence; processing continuation of benefits requests; and designating staff, which may include the UR reviewer, medical director, and/or attorney (required if recipient presents with counsel), to testify in fair hearing proceedings.

52) Describe the resources, including staffing, and processes the Offeror will dedicate to carry out activities related to due process and administrative hearings.

53) Describe in detail and provide examples of the Offeror’s process for generating recipient and provider notification letters in cases of adverse action. Include specifically how the free-text and relevant policy sections will be completed and the qualifications of the individuals who will perform this duty. In addition, the Offeror must address how quality
assurance of the due process letters system will be monitored, by whom, and with what frequency.

54) Describe how the Offeror will ensure that the representatives attending the fair hearing will have the appropriate credentials, training and experience with administrative hearings to address the issues involved.

B8. General Expectations – Recipient and Provider Services

The Offeror shall perform customer services functions to include but not be limited to: receiving, responding to and resolving requests from providers and recipients for information concerning utilization review policies and procedures, and the status of particular reviews, budgets, and LOC determinations. These activities and any others will be performed in a professional, courteous, and timely manner.

55) Describe how the Offeror will accommodate telephonic, fax, mailed, and electronic inquires and responses.

56) Describe how the Offeror will maintain adequate customer service resources, particularly when demand for a service and the service issued may vary greatly from time to time due to changes in the review criteria, policy, and/or procedures and other Medicaid program or regulation changes. Include the Offeror’s proposed staffing of the customer service function.

57) Describe the Offeror’s step-by-step customer service processes and procedures and how the Offeror will monitor the process and quality of service.

58) Provide any customer service quality or performance indicators from the Offeror’s previous or current government contracts. Include wait times, response times, abandonment rates, and other indicators, as appropriate.

59) Provide examples and methods of how the Offeror has worked proactively with providers, recipients, and other stakeholders including but not limited to training providers, website announcements and updates, webinars, participation with in-person training at professional associations, etc.

60) Describe how the Offeror will accommodate non-English speaking and hearing-impaired recipients.

61) Describe how the Offeror’s approach to ensure effective communication with the specific disability populations with whom it will interact and how it will implement appropriate staff training.

C. PROGRAM SERVICES/UTILIZATION REVIEWS

The Offeror shall ensure its utilization review staff are appropriately trained, credentialed and licensed to assess the medical and behavioral health needs and, specific to HCBS waiver programs, associated social needs, of all recipients that will receive services under this RFP. Moreover, the staff must possess adequate current knowledge of the requirements of the Scope of Work in relation to the HSD/MAD Program Policy Manual and applicable State and Federal
regulations; State-approved review criteria and standards; and, HSD/MAD-approved detailed review procedures.

The Offeror shall develop written detailed internal policies and procedures for all review types described in this RFP. Due to HSD/MAD-directed program policy changes and other changes in the external environment, the Offeror should anticipate frequent changes in procedures. However, the Offeror shall make every attempt to reduce the administrative burden on providers and recipients in all aspects of the review type.

1) Describe the Offeror’s utilization review system. The narrative shall include at a minimum:
   a. How the Offeror will ensure that recipients’ medical needs are not delayed due to the utilization review/prior authorization process.
   b. How the Offeror will perform emergency reviews.
   c. How the Offeror will notify recipients and providers of review decisions.
   d. How the Offeror will ensure that reviewers apply consistent and standardized processes and clinical justification and documentation of criteria used in decision making.
   e. How the Offer will provide clear and specific explanations of the reason(s) for any adverse action and denote the specific criteria and regulation as the bases for any adverse determination.
   f. How the Offeror will ensure that denial decisions for all reviews are made by a physician and the role that the Medical Director will play in this process.
   g. How the Offeror will evaluate/audit at least monthly the consistency of UR/UM reviewers, including any delegated UR/UM reviewers, in applying criteria in decision-making.
   h. How the Offeror will maximize the use of automated processing methods and be able to receive and respond to requests for utilization review requests by telephonic, fax, or other secure electronic means or in writing.
   i. Description of any technology or automation the Offeror will use to reduce administrative burden and simplify access to review information for its own staff as well as HSD/MAD and DOH staff, Medicaid providers, and recipients. Include how the Offeror will use methods to reduce administrative costs, eliminate lost or damaged attachments, and speed up the prior authorization process.
   j. Description of how the Offeror will set up a website for providers, case managers, and/or recipients, as applicable, to access forms and instructions.
   k. How the Offeror will make criteria sets for use in review activities readily available to providers.
   l. How the Offeror will track review requests and determinations from date of receipt to the date of the decision notice, including pended decision, and report these timelines.

2) Provide a description and organizational chart of the Offeror’s UR/UM structure, including the role of relevant individuals such as reviewers and medical director(s).

3) Describe how the Offeror and its subcontractors will use appropriately licensed health professionals (whose education, training and experience are commensurate with the reviews that they conduct) to supervise all UR decisions.
4) Describe the Offeror and its subcontractors’ process to ensure that reviewers have the requisite experience and training in identifying the needs of individuals in the waiver populations included this RFP.

5) Describe the Offeror’s recommended timeframes for reviews.

6) Describe the Offeror’s approach to develop and maintain Standard Operating Procedures, Policies and Procedures, or its equivalent, to cover the scope of work outlined in this RFP. The procedures shall specify all steps in each process, including required documents, review process, timeframes, applicable criteria, quality assurance, and exactly how the review decision is communicated to the requesting provider, recipient, fiscal agent, Mi Via FMA, case manager/consultant, and/or HSD/ISD (ASPEN), as applicable; and, how the review decision is entered into appropriate systems, such as Omnicaid or FOCosOnline.

7) Describe the Offeror’s internal oversight process to ensure that policies and procedures, standard operating procedures, or its equivalent, are accurate and kept up to date.

8) Describe the Offeror’s method of pending a review request and obtaining and tracking additional or missing information needed to make a review decision from a Medicaid provider and/or recipient, when applicable, that does not prolong the recipient’s receipt of medical care/services. This is also referred to as a Request for Information (RFI).

9) Describe the Offeror’s Level of Care redetermination/recertification process and include what steps will be taken to ensure that there are no gaps in approval dates of coverage.

10) Describe the Offeror’s process to review and determine when a procedure is considered experimental and what medical criteria will be applied.

11) Describe the Offeror’s understanding of models of care and resources available for DD and MF populations to include both institutional and home and community-based traditional and self-direction models.

12) If the Offeror proposes to subcontract a component of UR, such as in-home assessments:
   a. Describe how the Offeror will ensure the prospective subcontractor’s ability to perform the activities to be delegated and provide oversight of the duties performed by the subcontractor.
   b. The Offeror shall attest that it will not contract with an individual provider, or an entity, or an entity with an individual who is an officer, director, agent, or manager who owns or has a controlling interest in the entity, who has been convicted of crimes specified in Section 1128 of the Social Security Act, excluded from participation in any other state’s Medicaid, Medicare, or any other public or private health or health insurance program, assessed a civil penalty under the provision of Section 1128, or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

13) Describe the Offeror’s EMSA medical necessity review process.

14) Describe the Offeror’s prior authorization process for behavioral health services.

15) Describe the Offeror’s process for Alternative Benefit Plan medically frail exemptions and prior authorizations.

C1. Program Services/Utilization Reviews – Medical Eligibility/Level of Care:
The Offeror shall provide, at a minimum, an initial LOC determination and an annual LOC determination, including recipient and provider notification and system entry in Omnicaid and/or FOCoS online for DD, MF and Mi Via self-directed HCBS, PACE and ICF/IID. System entries must comply with mandated timeframes and accuracy. In addition, the Offeror shall conduct in-home assessments on individuals requesting Mi Via waiver services.

16) Describe the Offeror’s resources and processes for conducting level of care reviews. This narrative shall include at a minimum:

a. The Offeror’s approach to identify the recipient’s eligibility/ineligibility based on the level of care criteria and factors for nursing facility LOC and ICF/IID LOC.
b. How the Offeror will ensure consistent application of the appropriate criteria for reviewing medical and social support needs, and in addition, alternative support purchases of goods and services that are a key component of the Mi Via program.
c. How the Offeror will ensure accuracy and turn-around-times for determinations and reviews, including routine and expedited/emergency determinations and reviews.
d. How the Offeror will collaborate with providers, recipients, case managers, Mi Via consultants, and/or the DOH DDSD Intake and Eligibility Bureau to ensure complete, accurate, and timely completion of LOC determinations and redeterminations.
e. The Offeror’s capability to collect, maintain and manage all data elements required for LOC.
f. How the Offeror will prevent the expiration of LOCs requiring redetermination.

17) Describe the Offeror’s in-home assessment process.

18) Describe the Offeror’s understanding of, and vision for, self-direction, experience with self-direction models, and working in collaboration with program participants to help them comply with LOC requirements.

C2. Program Services/Utilization Reviews – HCBS Waivers ISP/SSP and Budgets:

The Offeror shall review and approve annually the service plans (i.e. ISP or SSP) for medical necessity, program compliance, and fiscal accountability for the DD, MF, and Mi Via waiver populations and enter the authorizations into Omnicaid and/or FOCoS online. System entries must comply with mandated timeframes and accuracy. The Offeror shall collaborate as necessary with the waiver case managers and Mi Via consultants.

19) Describe how the Offeror will apply State criteria for HCBW services that follow individualized, person-centered plans of care.
20) Describe how the Offeror will apply criteria for social support purchases of goods and services that are key components of the Mi Via program.
21) Describe how the Offeror will ensure that reviewers have the requisite experience and training in identifying the needs of individuals in the waiver populations described in this RFP.
22) Describe the Offeror's understanding of, and vision for, self-direction, of experience with self-direction models, and of working in collaboration with program participants to help them comply with SSP/ISP and budget requirements.
23) Describe the Offeror's plan to perform prior authorization reviews for DD waiver therapies (occupational, physical and speech), adult nursing, and behavioral support consultation utilizing the state's review criteria.

VI. COST PROPOSAL

HSD is considering two (2) different reimbursement options for services performed under this RFP and therefore requires two (2) separate cost proposals from all Offerors. The Offeror shall submit completed Cost Proposal Forms (see section VIII, Appendix C.).

All services, activities, and requirements under sections V.A. IMPLEMENTATION and V.B. ADMINISTRATION AND OPERATIONS are considered non-reimbursable. These services, activities and requirements are to be considered part of the Offeror's cost of doing business under this contract.

Option One (1)

Under option one (1), HSD will reimburse the Contractor a flat rate according to the utilization review/assessment service performed under section V.C. PROGRAM SERVICES/UTILIZATION REVIEW. EMSA and prior authorizations will be reimbursed at a per-review rate. Level of Care reviews and HCBS waivers ISP/SSP and budget approvals will be reimbursed at an annual rate per recipient.

Option Two (2)

Under option two (2), HSD is interested in the Offeror's alternate pricing methodology for services performed under this RFP.
VII. EVALUATION

A. EVALUATION OF PROPOSALS

HSD will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. All proposals will be reviewed for compliance with the mandatory, technical and cost proposal requirements as stated within the RFP. Proposals deemed non-responsive, missing key elements or received after the deadline will be eliminated from further consideration and a letter will be generated to the Offeror stating the reason for elimination. The Director of HSD/MAD will appoint an Evaluation Committee, which shall evaluate each responsive proposal on the basis of its technical merit. HSD reserves the right to use technical advisors who are employees of other State agencies and who have experience in specific areas of this RFP in this process.

B. EVALUATION POINT SUMMARY

The following is a summary of Section VII., Specifications, that identifies points available for each factor. These weighed factors will be used in the evaluation of Offeror proposals. Only finalist Offerors will receive points for an oral presentation.

<table>
<thead>
<tr>
<th>No.</th>
<th>Evaluation Factor</th>
<th>Points Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Experience, Qualifications, Performance, and Readiness</td>
<td>150</td>
</tr>
<tr>
<td>2.</td>
<td>Administration and Staffing</td>
<td>100</td>
</tr>
<tr>
<td>3.</td>
<td>Utilization Review Services, Quality Assurance, and Program Integrity</td>
<td>200</td>
</tr>
<tr>
<td>4.</td>
<td>Participant Rights and Provider Services</td>
<td>100</td>
</tr>
<tr>
<td>5.</td>
<td>Management Information Systems and Reporting Requirements</td>
<td>200</td>
</tr>
<tr>
<td>6.</td>
<td>Cost Proposal</td>
<td>200</td>
</tr>
<tr>
<td>7.</td>
<td>Oral Presentation</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>Total Points Available</td>
<td>1,000</td>
</tr>
</tbody>
</table>

C. EVALUATION FACTORS

Points will be awarded on the basis of the following evaluation factors:

1. **Experience, Qualifications, Performance and Readiness**

   The Offeror must be a CMS-approved QIO or QIO-like entity. The Offeror shall be evaluated on its experience, expertise and performance in managing complex utilization reviews (including ISP/SSP and budget approvals) and level of care assessment processes for the provision of Medicaid services and programs identified within this RFP. The Offeror’s ability to undertake and implement all service facets identified in this RFP shall be evaluated.

2. **Administration and Staffing**

   The Offeror shall be evaluated on its business operation model to meet the requirements detailed in this RFP, including services performed by subcontractors. The Offeror shall be evaluated on its staffing levels, professional qualifications and ability to perform and
manage complex reviews, to work cooperatively and in partnership with HSD/MAD and, where appropriate, DOH, and other Medicaid contractors to be responsive to recipients, providers and stakeholders identified in this RFP. The Offeror’s ability to automate processing methods utilizing clear, consistent and standardized procedures shall be evaluated, focusing on professional, timely, efficient, high quality, cost-effective operations.

3. **Utilization Review Services, Quality Assurance, and Program Integrity**
   The Offeror shall be evaluated on its entire utilization review operational structure and ability to provide oversight of a subcontractor to ensure compliance with all contract requirements to process level of care assessments, ISP/SSPs, budgets, and medical necessity reviews for the services and programs identified in this RFP. The Offeror shall be evaluated on its ability to complete reviews accurately and timely and communicate recipient review information with various contractors serving the same population such as, but not limited to, the Mi Via Fiscal Management Agent and the Centennial Care MCOs. The Offeror shall be evaluated on its approaches and practices to monitor, trend, evaluate, remediate, and report performance to HSD.

The Offeror’s commitment to continuous quality improvement in all areas of services will be evaluated.

The Offeror shall be evaluated on the organization’s approach to preventing, detecting and addressing fraudulent and/or abusive billing practices in the Medicaid program.

4. **Participant and Provider Services**
   The Offeror shall be evaluated on its customer service approach and capabilities. The Offeror shall be evaluated on its working knowledge of the New Mexico Medicaid regulatory requirements for due process rights and the existence of a due process system for recipients and providers identified in this RFP.

5. **Management Information Systems and Reporting Requirements**
   The Offeror and its subcontractors shall be evaluated on the sufficiency of its management information systems capability to meet HSD/MAD’s system requirements and interfaces with Omnicaid, ASPEN, and the FMA/FOCoS.

The Offeror shall be evaluated on tracking/reporting all reviews identified in this RFP. The Offeror shall be evaluated on its overall reporting system and capabilities.

6. **Cost**
   The offeror will be evaluated based on the total cost of implementation of the program for the one (1) year contract period.

   \[ \text{Offeror's Points} = \frac{\text{Lowest Equivalent Total Cost}}{\text{Offeror's Total Cost}} \times \text{Maximum Points Allowed} \]

7. **Oral Presentation**
   Points for the oral presentation will be awarded based upon an evaluation of the
presentation, the demonstration of the project and the quality of the solutions offered. Points will be awarded on effective communication, technical knowledge, experience with similar contracts and the quality of the responses to questions posed by the RFP Evaluation Committee.

D. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All Offeror proposals shall be reviewed for compliance with all mandatory requirements stated within this RFP. Proposals deemed non-responsive will be eliminated from further consideration.

2. The Procurement Manager may contact an Offeror for clarification of the response as specified in Section II B.7.

3. Responsive proposals will be evaluated on the factors in Section VII. that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors that are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. If oral presentations are scheduled with Finalist Offerors, points awarded from the oral presentations will be added to the previously assigned points to attain final scores.

4. The responsible Offeror whose proposal is most advantageous to HSD, taking into consideration the evaluation factors in Section VII, will be recommended for contract award. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
VIII. APPENDICES A - H
APPENDIX A
ACKNOWLEDGEMENT OF RECEIPT FORM
REQUEST FOR PROPOSALS
THIRD PARTY ASSESSOR

In acknowledgement of receipt of this Request for Proposal (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 H.

The acknowledgement of receipt should be signed and returned to the Procurement Manager Sequence of Events in Section II, Paragraph A. Only potential Offerors who elect to return this form completed with the intention of submitting a proposal will receive copies of all Offeror written questions and HSD’s written responses to those questions as well as RFP amendments if any are issued.

FIRM: ____________________________________________________________

REPRESENTED BY: ________________________________________________

TITLE: __________________________ PHONE NO.: ___________________

E-MAIL: ________________________ FAX NO.: _______________________

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 RFP.

RETURN THIS FORM TO:

Gina Capener
Procurement Manager
Exempt Services and Programs Bureau
Medical Assistance Division
Human Services Department
P.O. Box 2348, Santa Fe, NM 87504-2348
2025 S. Pacheco, Ark Plaza, Santa Fe, 87505
Attn: Gina Capener, Procurement Manager
505-827-7277 (Fax)
APPENDIX B
LETTER OF TRANSMITTAL FORM

RFP#: ____________________________________________
Offeror Name: ____________________________________________
Items #1 to #7 EACH MUST BE COMPLETED IN FULL. Failure to respond to all seven items WILL RESULT IN THE DISQUALIFICATION OF THE PROPOSAL!

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

2. For the person authorized by the organization to contractually obligate the organization:
   Name ____________________________________________
   Title ____________________________________________
   E-Mail Address ____________________________________________
   Telephone Number ____________________________________________

3. For the person authorized to negotiate the contract on behalf of the organization:
   Name ____________________________________________
   Title ____________________________________________
   E-Mail Address ____________________________________________
   Telephone Number ____________________________________________

4. For the person to be contacted for clarifications:
   Name ____________________________________________
   Title ____________________________________________
   E-Mail Address ____________________________________________
   Telephone Number ____________________________________________

5. Use of Sub-Contractors (Select one)
   _____ No sub-contractors will be used in the performance of this contract OR
   _____ The following sub-contractors will be used in the performance of this contract:
   ____________________________________________
   (Attach extra sheets, as needed)

6. Please describe any relationship with any entity with which will be used in the performance of this 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, Paragraph 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.
   ____________________________________________ , 2014
   (Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

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# APPENDIX C
## COST PROPOSAL

### OPTION ONE (1)

Cost Proposal Form
Medicaid Third Party Assessor

<table>
<thead>
<tr>
<th>Name of Offeror:</th>
<th>Description</th>
<th>Flat Rate</th>
<th>Proposed Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Utilization Review and Assessment Services</strong></td>
<td>Retrospective medical necessity reviews for Emergency Medical Services for Aliens.</td>
<td>Per Review</td>
<td></td>
</tr>
<tr>
<td>EMSA Reviews</td>
<td>Prior authorizations for the following Developmental Disabilities waiver services: adult nursing, therapies, and behavioral support consultation.</td>
<td>Per Review</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prior authorizations for services or programs that are exempt from managed care, including physical health and Alternative Benefit Plan and Alternative Benefit Plan Medically Fragile exemption.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Behavioral Health reviews</td>
<td>Prior authorizations for initial, concurrent and retro reviews</td>
<td>Annual Per Recipient</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prior authorizations for inpatient psychiatric care</td>
<td>Per Review</td>
<td></td>
</tr>
<tr>
<td><strong>Level of Care – Mi Via</strong></td>
<td>Initial and annual level of care determinations plus the in-home assessment for Mi Via adults and children requiring ICF/IID level of care.</td>
<td>Annual Per Recipient</td>
<td></td>
</tr>
<tr>
<td><strong>Level of Care – All others</strong></td>
<td>Initial and annual level of care determinations for adults and children in the Developmental Disabilities and Medically Fragile home and community-based waiver programs.</td>
<td>Annual Per Recipient</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Initial and annual level of care for recipients receiving long-term care services in an ICF/IID facility. Level of care determinations for recipients in the Program of All-Inclusive Care for the Elderly.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ISP/SSP and Budgets</strong></td>
<td>Review and approval of Individual Service Plans and budgets for DDW and MFW recipients. Review and approval of Service and Support Plans and budgets for Mi Via participants.</td>
<td>Annual Per Recipient</td>
<td></td>
</tr>
</tbody>
</table>
### OPTION TWO (2)

Cost Proposal Form

Medicaid Third Party Assessor

<table>
<thead>
<tr>
<th>Name of Offeror:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offeror’s Proposed Pricing Methodology</td>
</tr>
</tbody>
</table>

*Offeror may provide additional detailed worksheet(s) to sufficiently describe methodology.*
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 shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective Contractor, a family member of the prospective Contractor, or a representative of the prospective Contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official’s employees during the pendency of the procurement process or 2) a prospective Contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

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

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

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

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

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

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

**DISCLOSURE OF CONTRIBUTIONS:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution Made By</td>
<td></td>
</tr>
<tr>
<td>Relation to Prospective Contractor</td>
<td></td>
</tr>
<tr>
<td>Name of Applicable Public Official</td>
<td></td>
</tr>
<tr>
<td>Date Contribution(s) Made</td>
<td></td>
</tr>
<tr>
<td>Amount(s) of Contribution(s)</td>
<td></td>
</tr>
<tr>
<td>Nature of Contribution(s)</td>
<td></td>
</tr>
<tr>
<td>Purpose of Contribution(s)</td>
<td></td>
</tr>
</tbody>
</table>

(Attach extra pages if necessary)

__________________________  ____________________________  ___________
Signature                                           Title (Position)  Date

**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                                           Title (Position)  Date
APPENDIX E
NEW MEXICO EMPLOYEES 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:

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

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

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

2. 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 http://insurenewmexico.state.nm.us/.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000, $500,000 or $1,000,000.

Signature of Offeror: _________________________ Date_______
APPENDIX F
CONTRACT TERMS AND CONDITIONS

Sample Contract

State of New Mexico
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the State of New Mexico Human Services Department, hereinafter referred to as the “HSD,” and NAME OF 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.

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) including gross receipts tax, if applicable, in FYXX. 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 New Mexico gross receipts tax, if applicable, levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The 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.

   (FOR MULTI-YEAR CONTRACTS REPEAT THE sub paragraph above for each additional year. Then delete this bolded instruction.)

   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---)
(FOR MULTI-YEAR CONTRACTS REPEAT B, below, for each additional year, replacing each XX with digits representing the year(s), then delete this bolded instruction and B, above, which is for a single year contract.)

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 agency 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 Section 13-1-150 NMSA 1978, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

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 the HSD must do to cure such material breaches. Contractor’s notice of termination shall only be effective (iii) if the HSD does not cure all material breaches within the thirty (30) day notice period or (iv) 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 AGENCY'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 agency 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.


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 Procuring Agency.

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, and Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1. in accordance with Section 10-16-4.3 NMSA 1978, 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 Section 10-16-7(A) NMSA 1978 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 Section 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3. in accordance with Section 10-16-8(A) NMSA 1978, (i) the 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 Section 10-16-9(A) NMSA 1978 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 Section 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5. in accordance with Section 10-16-13 NMSA 1978, the 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 Section 10-16-3 and Section 10-16-13.3 NMSA 1978, 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 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, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

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 Section 38-3-1 (G) NMSA 1978. 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 time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

B. Contract for an independent A-133 audit at the Contractor’s expense, as applicable. 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 OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be made 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 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 a schedule of financial expenditures for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of $5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 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 OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

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: [http://insurenewmexico.state.nm.us/](http://insurenewmexico.state.nm.us/).

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 when contractor itself does not meet the size requirement for reporting and therefore is not 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:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

26. **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.

27. **Debarment and Suspension**
A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, 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 PSC, 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 PSC, 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 PSC was entered into by the parties. The Contractor’s certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, 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 PSC 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 PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC 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 PSC 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 PSC.

C. As required by statute, regulation or requirement of this PSC, 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.
28. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

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 or Subparts B and C of 7 C.F.R. Part 3018, 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC 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 PSC. 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 PSC.

29. 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 PSC, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.

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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 PSC 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.”

30. 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;

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

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

5. 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;

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

7. 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.

31. Findings and Sanctions

A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the services provided pursuant to this PSC and the administration thereof.

B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority 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 statues 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.

32. **Performance**
   In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees and its subcontractors and/or Business Associates (BA) with the following requirements:

A. All work will be performed under the supervision of the Contractor or the Contractor's responsible employees.

B. Contractor agrees that any Personally Identifiable Information (PII) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by or disclosure to any person or entity other than an officer or employee of the Contractor is prohibited.

C. All PII will be accounted for upon receipt and properly stored before, during, and after processing. In additional, all related output will be given the same level of protection as required for the source material.

D. The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, including 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. If immediate purging of all data storage components is not possible, the contractor certifies that any PII data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of PII will be given to the Procuring Agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

F. All computer systems, office equipment, and portable media receiving, processing, storing, or transmitting Protected Health Information (PHI), or PII must meet the requirements defined in HIPAA Security Rule, 45 CFR 160. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls.
G. The Contractor will provide signed acknowledgments for its staff and its subcontractors and/or BA staff, to provide certification that information security awareness and training was completed. These signed certifications will be provided to the agency contract manager upon contract start and annually thereafter.

H. All incidents affecting the compliance, operation, or security of the information and systematic functionality must be reported to the Procuring Agency. In addition to the self-certification and evaluation requirements, the Contractor shall notify the Procuring Agency of any instances of security breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours. Notification shall include a description of the security/non-compliance issue and corrective action planned and/or taken.

I. The Contractor must provide the Procuring Agency with any necessary safeguards to protect further issues caused by security breaches or non-compliance discoveries. The corrective action plan must contain a long term solution to possible future privacy or security threat of information. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures until the issue is resolved.

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

33. **Criminal/Civil Sanctions**
   A. It is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to Procuring Agency 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.

   B. Contractor agrees that granting access to PII must be preceded by certifying that each individual understands the Procuring Agency’s applicable security policy and procedures for safeguarding PII.

34. **Inspection**
   The Procuring Agency 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 PHI and/or PII under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

35. **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 makes it a business associate of the Procuring Agency as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the CONTRACTOR agrees to the terms of the HSD HIPAA Business Associate Agreement (BAA).

36. **Contractor’s Responsibility for Compliance With Laws and Regulations Relating to Information Security**

   A. The Contractor and all its employees, subcontractors, consultants, or agents performing the Services under this Agreement must comply with the following insofar as they apply to Contractor’s processing or storage of Procuring Agency’s 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 Technology for Economic and Clinical Health Act (HITECH Act);
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: ________________________________ Date: ______________
    HSD Cabinet Secretary

By: ________________________________ Date: ______________
    HSD Office of General Counsel

By: ________________________________ Date: ______________
    HSD Chief Financial Officer

By: ________________________________ Date: ______________
    Contractor

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

ID Number: 00-000000-00-0

By: ________________________________ Date: ______________
    Taxation and Revenue Department

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

By: ________________________________ Date: ______________
    DFA Contracts Review Bureau
Exhibit A

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.
APPENDIX G
SUSPENSION AND DEBARMENT REQUIREMENT

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT AND OTHER RESPONSIBILITY MATTERS

The entering of a contract between HSD and the successful Offeror pursuant to this RFP is a "covered transaction," as defined by 45 C.F.R. Part 76. HSD's contract with the successor Offeror shall contain a provision relating to debarment, suspension, and responsibility. All Offerors must provide as a part of their proposals a certification to HSD in the form provided below. Failure of an Offeror to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render the Offeror non-responsible. Furthermore, the Offeror shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Although HSD may review the veracity of the certification through the use of the federal Excluded Parties Listing System or by other means, the certification provided by the Offeror in paragraph A., below, is a material representation of fact upon which HSD will rely when making a contract award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to HSD, HSD may terminate the contract resulting from this request for proposals for default.

The certification provided by the Offeror in paragraph A., below, will be considered in connection with a determination of the Offeror's responsibility. A certification that any of the items in paragraph A., below, exists may result in rejection of the Offeror's proposal for non-responsibility and the withholding of an award under this RFP. If the Offeror's certification indicates that any of the items in paragraph A., below, exists, the Offeror shall provide with its proposal a full written explanation of the specific basis for, and circumstances connected to, the item; the Offeror's failure to provide such explanation will result in rejection of the Offeror's proposal. If the Offeror's certification indicates that that any of the items in paragraph A., below, exists, HSD, in its sole discretion, may request, that the U.S. Department of Health and Human Services grant an exception under 45 C.F.R. §§ 76.120 and 76.305 if HSD believes that the procurement schedule so permits and an exception is applicable and warranted under the circumstances. In no event will HSD award a contract to an Offeror if the requested exception is not granted for the Offeror.

By signing and submitting a proposal in response to this RFP, the Offeror certifies, to the best of its knowledge and belief, that:
A. The Offeror and/or any of its Principals (check applicable blocks):

<table>
<thead>
<tr>
<th>Status</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency.</td>
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<td>Have, within a three-year period preceding the date of the Offeror’s proposal, 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.</td>
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<td>Are presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with, commission of any of the offenses enumerated in paragraph A. (2) of this certification.</td>
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<td>Have, within a three-year period preceding the date of Offeror’s proposal, had one or more public agreements or transactions (federal, state or local) terminated for cause or default.</td>
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<tr>
<td>Have 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.</td>
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B. "Principal," for the purposes of this certification, shall have the meaning set forth in 45 C.F.R. § 76.995 and shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with federal funds, who: is in a position to handle federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

C. For the purposes of this certification, the terms used in the certification, such as covered transaction, debarred, excluded, exclusion, ineligible, ineligibility, participant, and person have the meanings set forth in the definitions and coverage rules of 45 C.F.R. Part 76.

D.

E. Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

OFFEROR:

SIGNATURE/TITLE: ____________________________

DATE: ____________________________
APPENDIX H
HIPAA BUSINESS ASSOCIATE AGREEMENT

Upon award of the contract this HIPAA Business Associate Agreement must be executed.

This Business Associate Agreement ("Agreement") is entered into between the New Mexico Human Services Department ("Department") and ________, hereinafter referred to as "Business Associate," pursuant to the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated thereunder.

1. Definition of Terms
   a. **Business Associate.** "Business Associate" shall mean ____________, acting in the capacity of a business associate as defined in 45 CFR § 160.103.
   b. **Covered Entity.** "Covered Entity" shall mean the Health Care Component of the New Mexico Human Services Department ("HSD"), which includes the Medical Assistance Division ("MAD").
   c. **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).
   d. **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, as currently in effect or as subsequently amended.
   e. **Protected Health Information.** "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
   f. **Required By Law.** "Required By Law" shall have the same meaning as in 45 CFR §164.103.
   g. **Secretary.** "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
   h. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Privacy Rule.

2. Obligations and Activities of Business Associate
   a. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement, or as Required by Law.
   b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
   c. 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.
   d. Business Associate agrees to report to the Agency’s Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.
   e. Business Associate agrees to ensure that any agent to whom it provides PHI received from HSD, or created or received by Business Associate on behalf of HSD, agrees to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such information.

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f. Business Associate agrees to provide, at HSD’s request, and in a reasonable time and manner, access to PHI in a Designated Record Set to HSD or, as directed by HSD, to an Individual in order to meet the requirements under 45 CFR § 164.524.

g. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that HSD directs or agrees to, pursuant to 45 CFR § 164.526, at the request of HSD or an Individual, and in the time and manner set forth in Department regulations.

h. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI received from HSD, or created or received by Business Associate on behalf of HSD, available to HSD or to the Secretary within seven (7) days of receiving a request from HSD or receiving notice of a request from the Secretary, for purposes of the Secretary’s determining HSD’s compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for HSD to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

j. Business Associate agrees to provide to HSD or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 of this Agreement, to permit HSD to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

   Except as otherwise limited by this Agreement, Business Associate may use or disclose PHI to perform functions, activities or services for or on behalf of HSD as set forth in the contract between the parties, Contract No. ____________, of which this Agreement is an integral part, provided that such use or disclosure would not violate the Privacy Rule if done by HSD or HSD’s minimum necessary policies and procedures. Business Associate may not use or disclose PHI received or created pursuant to this Agreement, except as follows:

   a. Except as otherwise limited by this Agreement, 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.

   b. Except as otherwise limited by this Agreement, Business Associate may disclose PHI where 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.

   c. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j) (1).

   d. HSD 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 HSD.

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

   a. HSD shall notify Business Associate of any limitation(s) in the Agency’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. HSD 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. HSD shall notify Business Associate of any restriction in the use or disclosure of PHI that HSD 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.

5. Term and Termination
a. Term. This Agreement shall be effective concurrently with the effective date of Contract No. _______________ between Business Associate and the Agency. This Agreement shall also terminate concurrently with that contract, except that obligations of Business Associate under this Agreement related to final disposition of PHI shall survive until resolved as set forth immediately below.

b. Disposition of PHI upon Termination. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI in its possession that was received from HSD, or created or received by Business Associate on behalf of HSD, 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 HSD notification of the conditions that make return or destruction of PHI not feasible. Business Associate shall require that its agents, affiliates, subsidiaries and subcontractors agree to the extension of all protections, limitations and restrictions required of Business Associate hereunder.

6. Miscellaneous
a. Interpretation. Any ambiguity in this Agreement, or any inconsistency between the provisions of this Agreement and the main body of the contract of which this Agreement is an integral part, shall be resolved to permit HSD to comply with the Privacy Rule.

b. Business Associate’s Compliance with HIPAA. HSD makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate’s own purposes or that any information in Business Associate’s possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, HSD 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 Agreement unlawful or unenforceable, or which materially affects any financial arrangement contained in this Agreement, the parties shall attempt amendment of this Agreement to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the Agreement pursuant to its termination provisions.

d. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than HSD, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, sub-business associates or employees assisting
Business Associate in the fulfillment of its obligations under this Agreement available to HSD, at no cost to HSD, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against HSD or its employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate’s performance under this Agreement, except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.

The remainder of this page is intentionally left blank.
IN WITNESS THEREOF, the parties hereto separately acknowledge this Business Associate Agreement in addition to their execution of Contract No. ____________, of which it is an integral part.

HUMAN SERVICES DEPARTMENT

By: ___________________________ Date: ___________________________
    HSD Cabinet Secretary

Approved as to form and legal sufficiency:

By: ___________________________ Date: ___________________________
    HSD General Counsel

BUSINESS ASSOCIATE

By: ___________________________ Date: ___________________________

Name: ___________________________

Title: ___________________________