

STATE OF NEW MEXICO



REQUEST FOR PROPOSALS (RFP)

RFP# 18-630-8000-0005

for

NEW MEXICO MEDICAL ASSISTANCE DIVISION

**EXTERNAL QUALITY REVIEW ORGANIZATION
(EQRO) SERVICES**

Issue Date: February 26, 2018

Proposals Due Date: April 5, 2018

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit competitive, sealed proposals from External Quality Review Organizations (EQRO) to perform both mandatory and optional External Quality Review (EQR) activities in accordance with the Code of Federal Regulation (CFR) 42 § 438.358.

B. BACKGROUND INFORMATION

Managed care has been the primary service delivery model for Medicaid in New Mexico since 1997 for physical health and since 2008 for long-term services and supports (LTSS). Today, the managed care program, known as Centennial Care, covers approximately 700,661 individuals (as of July 2017). Currently, four MCOs provide the full array of physical, behavioral and long-term services and supports through an integrated delivery system.

HSD implemented Centennial Care through a Section 1115 Demonstration Waiver that was approved by the federal Centers for Medicare & Medicaid Services (CMS) for a five year period, from January 2014 through December 2018. Centennial Care modernized the Medicaid program by improving the efficiency and effectiveness of healthcare delivery; integrating physical, behavioral and LTSS; advancing person-centered models of care; and slowing the rate of growth in program costs. Its guiding principles include developing a comprehensive service delivery system, increasing personal responsibility, encouraging active engagement of Members in their health care, emphasizing payment reforms to incentivize quality versus quantity of services, and maximizing opportunities to achieve administrative simplification.

In November of 2017, HSD/MAD submitted the Centennial Care 1115 Waiver renewal to CMS. In the renewal application, New Mexico has identified opportunities for continued progress in transforming its Medicaid program into an integrated, person-centered, value-based delivery system through the implementation of Centennial Care 2.0; therefore, building on the many successes and accomplishments achieved since the implementation of managed care.

C. SCOPE OF PROCUREMENT

The purpose of this RFP is to seek responses from qualified organizations to conduct the EQR activities in accordance with CMS EQR protocols to enable the State of New Mexico's Human Services Department (HSD)/Medical Assistance Division (MAD) to comply with Federal and State EQR requirements.

The EQRO will review and assess the services provided by the contracted MCOs to determine compliance with Federal and State standards for quality, timeliness and access to services for Medicaid Beneficiaries in New Mexico as detailed in the Scope of Work in Section IV.

The contract resulting from this RFP shall begin upon approval by HSD. The term of the contract signed as a result of this RFP will be for a period of one (1) year and may be extended for three (3) additional one (1) year periods. In no circumstance, shall the contract exceed a total of four (4) years in duration. not to exceed 4 years beginning July 1, 2018.

D. PROCUREMENT MANAGER

1. HSD/MAD has assigned a Procurement Manager who is responsible for the conduct of this procurement, whose name, address, telephone number and e-mail address are listed below:

Name: Katherine Leyba
Address: Medical Assistance Division
Human Services Department
2025 South Pacheco Street
Santa Fe, New Mexico 87504
Telephone: (505) 827-7715
Fax: (505) 827-3126
Email: katherine.leyba@state.nm.us

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

Name: Katherine Leyba
Reference RFP Name: New Mexico Medicaid External Quality Review Organization
Address: Medical Assistance Division
Human Services Department
2025 South Pacheco Street
Santa Fe, New Mexico 87504

3. Any inquiries or requests regarding this procurement should be submitted only to the Procurement Manager by email. The RFP identification number must be referenced in all communications regarding the RFP. Questions must be clearly labeled and must cite the specific source (Section and page) that forms the basis of the question.

E. DEFINITION OF TERMINOLOGY

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

“1115 Demonstration Waiver” refers to the State of New Mexico’s Medicaid demonstration project, authorized by CMS pursuant to section 1115(a) of the Social Security Act to implement Centennial Care.

“Agency” means the Human Services Department.

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

“Beneficiary” refers to one who receives a benefit, as in funds or services.

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

“Centers for Medicare and Medicaid Services (CMS)” A part of the United States Department of Health and Human Services responsible for the administration of Medicare, Medicaid, and the Children’s Health Insurance Program, and the Health Insurance Marketplace.

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

“Code of Federal Regulation (CFR)” refers to a codification set of documents of Public Health Statutes published by the Office of the Federal Register, National Archives and Records Administration.

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

“Contract Manager (CM)” means the individual selected to manage all aspects of the contract and act as the agency representative in all matters relevant to the contract.

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

“Corrective Action Plan (CAP)” means a list of actions and an associated timetable for implementation to remedy a specific problem.

“Determination” means the written documentation of a decision of the Procurement Manager including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“Desirable” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

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

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

“External Quality Review (EQR)” means the analysis and evaluation by an external quality review organization of aggregated information on quality, timeliness, and access to the healthcare services that an MCO or their contractors furnish to Medicaid recipients.

“External Quality Review Organization (EQRO)” means an organization that meets the competence and independence requirements to perform external quality review.

“Finalist” means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

“Healthcare Effectiveness Data and Information Set (HEDIS)” means a standardized set of MCO performance measures developed and updated by the National Committee for Quality Assurance.

“Human Services Department (HSD)” means the executive department in New Mexico responsible for the administration Medicaid and

“IT” means Information Technology.

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

“Managed Care Organization (MCO)” means an organization licensed to manage, coordinate, and assume financial risk on a capitated basis for the delivery of a specified set of services to enrolled members in a given geographic area.

“Managed Care Policy Manual” refers to the New Mexico Medicaid managed care policy section, which defines the scope of responsibilities of the Managed care organization for access.

“Medical Assistance Division (MAD)” refers to the Division within the HSD that administers the State’s Medicaid program.

“National Committee for Quality Assurance (NCQA)” refers to the national organization, which, among other services, develops and updates quality standards for use in managed care.

“New Mexico Administrative Code (NMAC)” refers to the special category of law written by state agencies to support, clarify, or implement specific laws enacted by the state legislature.

“Notice of Direction (NOD)” refers to the notice from HSD/MAD to the EQRO detailing the specific reimbursable scope of work deliverables for each EQR activity.

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

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

“Procurement Manager” means the person or designee authorized by HSD to manage or administer a procurement requiring the evaluation of competitive, sealed proposals.

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

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates when the project scope is achieved and project acceptance is given by the project executive sponsor.

“Quality Management (QM)/Quality Improvement (QI)” refers to quality management/quality improvement processes that are planned, systemic, clearly defined, and at least as stringent as federal requirements.

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

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

“Responsive Offer” means an offer that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.

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

“Special Terms and Conditions (STCs)” refers to the conditions of operations set forth by CMS that detail the obligations of HSD/MAD to CMS during the life of the 1115 Demonstration Waiver.

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

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

“State Agency” means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the purchasing division of the general services department and the state purchasing agent but does not include local public bodies.

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

F. PROCUREMENT LIBRARY

An online procurement library has been established. Offerors are encouraged to review the materials contained in the Procurement Library that can be accessed at:

http://www.hsd.state.nm.us/Centennial_Care_RFP.aspx. The library contains information listed below:

Procurement Regulations and Request for Proposal – RFP instructions:

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

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

1. CFR resource information at:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

2. Quality Improvement Organization Manual, available at:

<http://www.cms.hhs.gov/QualityImprovementOrgs>

3. New Mexico Administrative Code (NMAC) 8.308.21.14 External Quality Review Organization:

<http://164.64.110.239/nmac/>

4. Centennial Care Contracts:

<http://www.hsd.state.nm.us/LookingForInformation/medical-assistance-division.aspx>

5. Centennial Care 2.0 RFP:

http://www.hsd.state.nm.us/uploads/FileLinks/c06b4701fbc84ea3938e646301d8c950/2017_MCO_RFP_%2318_630_8000_0001_for_Centennial_Care_2.0__9_1_17.pdf

6. Centennial Care Policy:

[http://www.hsd.state.nm.us/uploads/files/Managed%20Care%20Policy%20Manual%204_17\(1\).pdf](http://www.hsd.state.nm.us/uploads/files/Managed%20Care%20Policy%20Manual%204_17(1).pdf)

7. Centers for Medicare and Medicaid Services, Centennial Care Special Terms and Conditions:

http://www.hsd.state.nm.us/uploads/FileLinks/f2f07ac7becd43f3a0fcefae255c1793/NM_11_15_STCs_Revised_11.18.14.pdf

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

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

	Action	Responsibility	Date *
1.	Issue of RFP	HSD	February 26, 2018
2.	Deadline for Offerors to submit Mandatory Acknowledgement of Receipt Form to HSD	HSD	March 13, 2018
3.	Pre-Proposal Conference	Potential Offerors	March 13, 2018
4.	Deadline to Submit Additional Questions	Potential Offerors	March 13, 2018
5.	Response to Written Questions	HSD	March 19, 2018
6.	Deadline for Submission of Proposal	Offerors	April 5, 2018
7.	Proposal Evaluation	Evaluation Committee	April 6-12, 2018
8.	Selection of Finalists	Evaluation Committee	April 13, 2018
9.	Best and Final Offers from Finalists	Offerors	April 20, 2018
10.	Oral Presentation by Finalists (At HSD's Discretion)	Offerors/Evaluation Committee	April 25-26, 2018
11.	Finalize Contract	HSD/Offeror	May 4, 2018
12.	Contract Award	HSD	May 10, 2018
13.	Protest Deadline	Offerors	15 days following the contract award
14.	Effective Date of Contract (Approximate)	HSD	July 1, 2018

** Dates subject to change at the discretion of the Department*

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State Human Services Department as stated in Section II, A. SEQUENCE OF EVENTS. The RFP and amendments, if any, may be downloaded from the following address:

http://www.hsd.state.nm.us/Centennial_Care_RFP.aspx.

2. Deadline for Offerors to submit Mandatory Acknowledgement of Receipt Form to HSD

Potential Offerors should hand deliver, return by email or by registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document, APPENDIX A, to have their organizations placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MST or MDT on as stated in Section II, A. SEQUENCE OF EVENTS

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

3. Pre-Proposal Conference

A pre-proposal conference will be held at 1:00 P.M. MST or MDT, on Tuesday, March 13, 2018, at the HSD/MAD Ark Plaza, South Conference Room, 2025 South Pacheco Street in Santa Fe, New Mexico as stated in Section II, A. SEQUENCE OF EVENTS. Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I, Paragraph D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed in writing on the date listed in Section II, A. SEQUENCE OF EVENTS. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended, but not a prerequisite for submission of a proposal.

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until March 13, 2018 as stated in Section II, A. SEQUENCE OF EVENTS. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph D.

5. Response to Written Questions

As indicated in Section II, A. SEQUENCE OF EVENTS, written responses to written questions will be distributed to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy will be sent to all Offerors that provide Acknowledgement of Receipt Forms described in II.B.2 before the deadline. If this RFP is done through state purchasing, additional copies will be posted to:

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

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST or MDT, Thursday, April 5, 2018, as stated in Section II, A. SEQUENCE OF EVENTS. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph D2. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the New Mexico Medicaid External Quality Review Organization RFP # 18-630-8000-0005. Proposals submitted by facsimile, or other electronic means, will not be accepted.

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

7. Proposal Evaluation

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

8. Selection of Finalists

The Procurement Manager will notify the finalist Offerors selected by the Evaluation Committee as per schedule Section II. A., SEQUENCE OF EVENTS, or as soon as possible. A schedule for the oral presentation and demonstration will be determined at that time if determined necessary by MAD.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best and final offers by as per schedule Section II. A., SEQUENCE OF EVENTS, or as soon as possible. Best and final offers may also be clarified and amended at finalist Offerors’ oral presentations and demonstrations.

10. Oral Presentations

Finalist Offerors may be required to conduct an oral presentation at a location to be determined as per schedule Section II. A., SEQUENCE OF EVENTS, or as soon as possible. Whether or not oral presentations will be held is at the discretion of the Evaluation Committee.

11. Finalize Contractual Agreements

Any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per schedule Section II. A., SEQUENCE OF EVENTS or as soon thereafter as possible. This date is subject to change at the discretion of the Agency Procurement Manager. In the event that mutually agreeable terms cannot be reached with

the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

12. Contract Awards

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

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

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The 15 calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 pm Mountain Standard Time/Daylight Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also include a statement of the grounds for protest, including appropriate supporting exhibits, and it must specify the ruling requested from the party listed below. Protests must be addressed and delivered to the Cabinet Secretary, with a copy to the Procurement Manager and the General Counsel:

Office of General Counsel
Pollon Plaza
2009 South Pacheco
Santa Fe, New Mexico 87505

Mailing Address:
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

2. Incurring Cost

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

3. Contractor Responsibility

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

4. Subcontractors/Consent

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

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best and final offer, if the Offeror is invited or required to submit one.

8. Disclosure of Proposal Contents

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

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

9. No Obligation

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

10. Termination

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

11. Sufficient Appropriation

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

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

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

15. Contract Terms and Conditions

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

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

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

16. Offeror Terms and Conditions

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

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. Offerors must submit with the proposal a complete set of any additional terms and conditions which they expect to have included in a contract negotiated with the Agency.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

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

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements in instances where all responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. Agency Rights

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

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico.

25. Confidentiality

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

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

26. Electronic mail address required

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

27. Use of Electronic Versions of this RFP

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

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

28. New Mexico Employees Health Coverage

- a. If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- b. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information
<http://www.insurenemexico.state.nm.us/>.
- d. For indefinite quantity, indefinite delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined revenue (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

29. Campaign Contribution Disclosure Form

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

30. Pay Equity Reporting Requirements

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

31. Disclosure Regarding Responsibility

a. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any State agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:

- a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
4. Has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds three thousand dollars (\$3,000) of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
5. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
6. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to the Contract if, at any time during the term of the Contract, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
7. A disclosure that any of the items in this requirement exist will not necessarily result in termination of the Contract. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under the Contract. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of the Contract pursuant to the conditions set forth in Section 4 of Appendix C, the Sample Contract.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed

that which is the normally possessed by a prudent person in the ordinary course of business dealings.

9. The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of the Contract. If during the performance of the Contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Contract. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved Contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

32. New Mexico Preferences: The New Mexico preferences shall not apply when the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

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

B. NUMBER OF COPIES

Offerors should deliver:

Binder 1: one (1) original and five (5) identical hardcopies of their Technical Proposal; Original and all copies shall be in separate labeled binders; all confidential information in the proposal shall be clearly identified and easily segregated from the rest of the proposal.

Binder 2: one (1) original, and two (2) identical hardcopies of Cost proposal; Original and all copies shall be in separate labeled binders.

One (1) CD with digital media of the proposal containing ONLY the Technical Proposal. This copy must not contain any Cost information.

One (1) CD with digital media of the Cost Proposal.

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

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

C. CONFIDENTIAL/PROPRIETARY MATERIALS

Electronic files are required for the proposal response components (as noted above). Each proposal component shall include (and be clearly marked for each component):

- 1.** A file with the **complete proposal response(s)**, including any confidential and/or proprietary information within that responses component.
- 2.** A file of response(s) with **confidential/proprietary information deleted** from it. (This version can be used for public records requests.)
- 3.** A file of the response(s) with only the confidential/proprietary information from that response.

If no confidential/proprietary information is contained within the submitted materials, only the complete proposal responses are needed in electronic form. If an Offeror submits only a complete electronic file of each proposal component, HSD understands that no confidential or proprietary materials are contained within.

D. PROPOSAL FORMAT

All proposals must be submitted as follows:

Typewritten on standard 8 ½ x 11 inch paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within binders with tabs delineating each section.

1. Proposal Content and Organization

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

Technical Proposal (Binder 1):

1. Signed Letter of Transmittal;
2. Table of Contents;
3. Proposal Summary (Optional);
4. Response to Specifications in section IV, except cost information which shall be included in Cost Proposal/Binder 2 only. Responses to this section should be contained within twenty five (25) pages or less;
5. Response to Contract Terms and Conditions outlined in the sample contract;
6. Offeror's Additional Terms and Conditions;
7. Signed Campaign Contribution Form;
8. Signed Employee Health Coverage Form;
9. Other Supporting Material (Optional).

Cost Proposal (Binder 2):

1. Completed Cost Response Form

Within each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder #2 on the cost response form.

The proposal summary may be included by potential Offerors to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

2. Letter of Transmittal

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

1. Identify the submitting business entity.
2. Identify the name, title, telephone, and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.

3. Identify the name, title, telephone, and e-mail address of the person authorized to negotiate the contract on behalf of the organization (if different than (2) above).
4. Identify the names, titles, telephone, and e-mail addresses of persons to be contacted for clarification/questions regarding proposal content.
5. Identify subcontractors (if any) anticipated to be utilized in the performance of any resultant Contract award.
6. Describe the relationship with any other entity which will be used in the performance of this awarded Contract.
7. Identify the following with a check mark and signature where required:
 - a. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
 - b. Acceptance of Section V of this RFP; and
 - c. Acknowledge receipt of any and all amendments to this RFP.
8. Be signed by the person identified in paragraph 2 above.

PLEASE NOTE: if the proposal is submitted through State Purchasing's electronic submission system, the Offeror need submit only a single electronic copy of each binder of the proposal. Please separate the proposal for the technical specifications and the proposal for the cost as well as the proposal for the confidential information into separate files in your submission. Each "envelope" (file) location for each of the three sections of the RFP will be specified in the upload section of the Offeror's electronic submission.

IV. SPECIFICATIONS

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

A. DETAILED SCOPE OF WORK

The Social Security Act (SSA) requires States that operate Medicaid managed care programs to provide for an external, independent review of their contracted MCOs. CMS provides States with matching Federal funds for review expenditures. The EQRO will conduct the EQR activities in accordance with the CMS EQR protocol to ensure HSD/MAD compliance with SSA mandates.

An EQR is the analysis and evaluation by an EQRO, of aggregated information on quality, timeliness, and access to the health care services that a MCO or their contractors furnish to Medicaid beneficiaries.

Pursuant to CFR 42 §438.350, each State that contracts with MCOs must ensure:

1. A qualified EQRO performs an annual EQR for each contracting MCO;
2. The EQRO has sufficient information to use in performing the review;
3. The information used to carry out the review must be obtained from the EQR-related activities described in CFR 42 §438.358;
4. For each EQR-related activity, the information gathered for use in the EQR must include the elements described in CFR 42 §438.364(a)(1)(i) through (iv); and
5. The information provided to the EQRO is obtained through methods consistent with the CMS EQR protocols established by the Secretary of Health and Human Services (HHS) and specifies:
 - a. The data to be gathered;
 - b. The sources of the data;
 - c. The activities and steps to be followed in collecting the data to promote its accuracy, validity, and reliability;
 - d. The proposed methods or methods for validity analyzing and interpreting the data once obtained; and
 - e. Instructions, guidelines, worksheets, and other documents or tools necessary for implementing the protocol.

Notice of Direction

HSD/MAD will initiate each EQR review or validation activity through a notice of direction (NOD) provided to the EQRO. In response to the NOD, the EQRO will develop measurement and scoring tools, review criteria and work plan methodology in accordance with CMS EQR protocol.

Deliverables

The EQRO will review and report the following EQR activities in accordance with Federal EQR regulations and standards detailed in CFR 42 § 438; New Mexico Administrative Code (NMAC) 8.308.21.14; 1115 Demonstration Waiver Special Terms and Conditions (STCs); MCO contracts; and the Managed Care Policy Manual.

- 1. The EQRO will design and conduct an annual Compliance Review to determine each MCO's compliance with the Federal Managed Care Regulations set forth in CFR 42 § 438, Subpart D. The EQRO will adhere to CMS EQR Protocol 1, which defines the activities and tools necessary to review program documents and conduct interviews with each MCO's personnel to efficiently collect the information necessary to analyze and determine compliance with Federal and State standards.**

HSD/MAD will select the standards (i.e., access, structure and operations, or measurement and improvement) to be evaluated and provide direction to the EQRO through a NOD.

The EQRO will provide findings and recommendations to each MCO to include opportunities for improvement or corrective action steps if indicated.

The EQRO will deliver to HSD/MAD a peer reviewed final written report describing all activities of the Compliance Review. The report will contain a comprehensive, aggregated summary of all MCO findings and will document components of the review and final compliance determinations for each regulatory provision. The report will also include a year-to-year comparison of MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous compliance reviews to determine if such actions reflected positively or continued corrective action is required.

- 2. The EQRO will design and conduct an annual Validation of Performance Measures (PMs) in accordance with CFR 42 § 438.330(b)(1). The EQRO will adhere to CMS EQR Protocol 2, which defines the activities and tools necessary to assess the accuracy of PMs reported by each MCO.**

In addition, the EQRO will assess the integrity of each MCO's information system by conducting an Information Systems Capability Assessment (ISCA) in accordance with CMS EQR Protocol Appendix V.

The EQRO will provide findings and recommendations to each MCO to include opportunities for improvement or corrective action steps if indicated.

The EQRO will deliver to HSD/MAD a peer reviewed final written report describing all activities of the PM validation including the assessment methodology and analysis of performance. The report will include an assessment of each MCO's Quality Management (QM)/Quality Improvement (QI) program and detail the findings of the ISCA. The report will include a MCO specific year-to-year comparison analysis, as well as a MCO-to-MCO comparison. The report will also include MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous review periods to determine if such actions reflected positively or if continued corrective action is required.

- 3. The EQRO will design and conduct an annual Validation of each MCO's Performance Improvement Projects (PIPs) required in accordance with CFR 42 § 438.330(b)(1). The EQRO will adhere to CMS EQR Protocol 3, which defines the activities and tools used to determine whether a health care quality PIP was designed, conducted, and reported in a methodologically sound manner and to determine if the PIP improved the processes and outcomes of health care provided by the MCO.**

The EQRO will provide findings and recommendations to each MCO to include opportunities for improvement or corrective action steps if indicated.

The EQRO will deliver to HSD/MAD a peer reviewed final written report describing all activities including: the assessment methodology applied to the validation of each of the HSD/MAD directed PIPs current during the review period; assessment of each MCO's methodology for conducting the PIPs; verification of the PIP findings; and evaluation of validity and reliability of study results. The report will also include MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous review periods to determine if such actions reflected positively or if continued corrective action is required.

- 4. The EQRO will design and conduct an annual Validation of each MCO's Network Adequacy during the preceding 12 months to comply with the requirements set forth in CFR 42 § 438.68 and § 438.14(b)(1). The EQRO will adhere to HSD/MAD standards and the network adequacy CMS EQR Protocol upon CMS development.**

The EQRO will validate each MCO's adherence to HSD/MAD standards for time and distance by the MCO for the following provider types:

- a. Primary care, adult and pediatric;
- b. OB/GYN;

- c. Behavioral health (mental health and substance use disorder, adult and pediatric);
- d. Specialist, adult and pediatric;
- e. Hospital;
- f. Pharmacy;
- g. Pediatric dental; and
- h. Long Term Services and Support.

The EQRO will include a detailed assessment of each MCO's Network Adequacy consistent with the following elements:

- a. The anticipated Medicaid enrollment;
- b. The expected utilization of services;
- c. The characteristics and health care needs of specific Medicaid populations covered by the MCO;
- d. The number and type of network providers;
- e. The number of network providers who are not accepting new Medicaid patients;
- f. The geographic location of network provider and Medicaid enrollees, considering the State's time and distance requirements detailed in the MCO contract;
- g. The ability of network providers to communicate with limited English proficient enrollees in their preferred language;
- h. The ability of network providers to ensure physical access, reasonable accommodations, culturally competent communications, and accessible equipment for Medicaid enrollees with physical or mental disabilities; and
- i. The availability of triage lines or screening systems, as well as the use of telemedicine, e-visits and/or other evolving and innovative technological solutions.

The EQRO will deliver to HSD/MAD a peer reviewed final written report detailing all activities of the Network Adequacy Validation project including the assessment methodology and analysis of performance. The report will include a year-to-year comparison of MCO specific findings, recommendations, and corrective action steps, if applicable, directed by the EQRO. The EQRO will detail the initiatives taken by each MCO to address findings, recommendations, and corrective action steps from previous review periods to determine if such actions reflected positively or if continued corrective action is required.

5. **The EQRO will design and conduct a Validation of Encounter Data reported by each MCO in accordance with CFR 42 § 438.310(c)(2) and determined by HSD/MAD. The EQRO will adhere to CMS EQR Protocol 4, which defines the activities and tools necessary to assess completeness and accuracy of encounter data submitted to the HSD/MAD by the MCOs.**

The EQRO will deliver to HSD/MAD a peer reviewed final written report detailing all activities of the Encounter Data Validation project including the assessment methodology, and analysis of each MCO's data submission process. The report will include tables that display summary statistics on accuracy and completeness of the encounter data and recommendations to each MCO and HSD/MAD.

6. **The EQRO will submit to HSD/MAD an annual detailed technical report that summarizes findings on access and quality of care in accordance with CFR 42 § 438.364.**

The EQRO will deliver to HSD/MAD an annual peer reviewed detailed technical report that summarizes findings on access and quality of care, including:

- a. A description of the manner in which the data from all activities conducted in accordance with §438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by each MCO;
- b. For each EQR-related activity conducted in accordance with § 438.358
 - (i) Objectives;
 - (ii) Technical methods of data collection and analysis;
 - (iii) Description of data obtained, including validated performance measurement data for each activity conducted in accordance with § 438.358(b)(1)(i) and (ii); and
 - (iv) Conclusions drawn from the data;
- c. An assessment of each MCO's strengths and weaknesses for the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries;
- d. Recommendations for improving the quality of health care services furnished by each MCO including how the State can target goals and objectives in the quality strategy, under § 438.340, to better support improvement in the quality, timeliness, and access to health care services furnished to Medicaid beneficiaries;
- e. Methodologically appropriate, comparative information about all MCOs consistent guidance included in the EQR protocols issued in accordance with § 438.352(e); and

- f. An assessment of the degree to which each MCO has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year's EQR.

The EQRO shall deliver the finalized annual technical report to HSD/MAD by 28th day of February, following the end of each calendar year to ensure compliance with the April 30th deadline for submission to CMS.

7. The EQRO will design and conduct a random monthly Nursing Facility Level of Care (NF LOC) determination audit in accordance with the 1115 Demonstration Waiver STCs to ensure that the NF LOC criteria are applied consistently and equitable across the New Mexico Medicaid program.

HSD/MAD will deliver a NOD to the EQRO defining the sampling criteria and sampling methodology to be applied during the development of the project plan NF LOC review. The EQRO project deliverables will include the following:

- a. Define and develop a project plan for conducting desk reviews of NF LOC ratings;
- b. Develop random sampling methodology to complete NF LOC determinations collected from each MCOs for the NF LOC rating determination. The audit shall consist of a random stratified sample and will include both approved and denied NF LOC determinations;
- c. Develop review tools for capturing data on accuracy, timeliness, physician review, and reasons for denial;
- d. Conduct random external monthly reviews of each MCO based on New Mexico Medicaid Nursing Facility (NF) Level of Care (LOC) Criteria and Instructions; and
- e. Report findings of NF LOC activities in monthly, quarterly, and annual reports to HSD/MAD.

1. Communications and Meetings:

The EQRO is required to designate a qualified individual to serve as the dedicated EQRO Contract Manager (CM) for HSD/MAD. The CM must hold a senior management position within the EQRO and be authorized to represent the EQRO in all matters pertaining to the EQRO contract with HSD/MAD. The EQRO CM will be responsible for the following deliverables:

- a. Coordinate all EQR activities with the designated HSD/MAD EQRO CM throughout the design, development and finalization of all technical reports and other deliverables;
- b. Participate in weekly meetings or as often as requested by HSD/MAD either via phone, video conference or on site at HSD/MAD. The purpose of these regular meetings is to

maintain communication with the HSD/MAD designated EQRO CM to discuss progress, barriers, and any other related issues relevant to the EQR activities;

- c. Designate appropriate staff to meet with HSD/MAD and MCO staff to provide clarification or direction in relation to EQR projects;
- d. Facilitate meetings to include; providing an agenda, minute taking, and creation and distribution of informational materials;
- e. Facilitate and prepare oral presentation of EQR findings, recommendations, corrective action plans, and technical assistance to HSD/MAD and/or MCO staff;
- f. Ensure all final technical reports and other deliverables are timely, well written, accurate, and complete;
- g. Assist HSD/MAD in responding to any questions from CMS or other stakeholders about any final technical reports or deliverables; and
- h. Prepare and deliver monthly Contractor activity reports to HSD/MAD.

B. MANDATORY SPECIFICATIONS

SEC. 1902 (a)(30)(A) of the SSA requires the state Medicaid Agency provide methods and procedures to safeguard against unnecessary utilization of care and services and to assure “efficiency, economy and quality of care”. Under Section 1902 (d), a state can contract with a Quality Improvement Organization (QIO) or QIO-like entity to perform medical and utilization review functions required by law.

HSD/MAD requires an Offeror to meet the following requirements:

1. Maintain certification by CMS as a QIO or QIO-like entity;
2. Demonstrate competency, knowledge and experience in conducting EQR activities in accordance with CMS EQR protocols;
3. Demonstrate employment of qualified EQR staff with experience and knowledge of the following:
 - a. Medicaid beneficiaries, policies, data systems, and processes;
 - b. Managed care delivery systems, organizations, and financing;
 - c. QM/QI methods and standards;
 - d. Research design and methodology, including statistical analysis;

- e. Meaningful and EQR appropriate technical report writing; and
 - f. Knowledge of and access to the standards, tools, and data from the National Committee for Quality Assurance (NCQA) including; Healthcare Effectiveness Data and Information Set (HEDIS); Quality Compass (QC); and Consumer Assessment of Healthcare Providers and Systems (CAHPS) surveys;
4. Maintain sufficient physical, technological, and financial resources to conduct EQR and EQR-related activities;
 5. Demonstrate the presence of other clinical and non-clinical skills necessary to carry out EQR and EQR-related activities and to oversee the work of any subcontractors;
 6. Demonstrate the independence of the EQRO and any of its subcontractors from the State Medicaid agency, or from the MCOs that they review;
 7. Submit a high level work plan including all key positions dedicated for the following EQR activities:
 - a. Validation of MCO PIPs;
 - b. Validation of PMs;
 - c. MCO Compliance with Federal Managed Care Regulations and State standards;
 - d. Validation of MCO Network Adequacy;
 - e. Validation of Encounter Data reported by the MCO;
 - f. Information System Capability Assessment; and
 - g. Annual technical report summary; and
 8. Demonstrate policy and procedures to ensure a seamless transition of EQR activities from one entity to another.

C. Organizational Experience

Offerors must demonstrate the following:

1. Experience as an EQRO in the last three (3) years;
2. A list of agencies for which the work was provided; include dates and project description;
3. A statement of work completed on all projects as an EQRO, include demonstration of adherence to timeliness of deliverables;

4. Prior government related experience within the past five (5) years;
5. The primary point of contact for the projects described in this RFP; and
6. Disclosure of any legal or disciplinary actions and outcomes of such.

D. Organizational References

Offerors shall provide a minimum of three (3) references from similar projects performed for private, state or large local government clients within the last three years. **Offerors are required to submit APPENDIX G, Reference Questionnaire, to their listed business references. The business references must submit the Reference Form directly to the designee, as described in Section I Paragraph D.** It is the Offeror's responsibility to ensure the completed forms are received on or before the proposal submission deadline for inclusion in the evaluation process.

Organizational References that are not received, or are incomplete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Committee may contact any or all business references for validation of information submitted. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Business Reference information required herein), in its evaluation of Offeror responsibility per Section II, Part C.18.

Offerors shall submit the following business reference information as part of Offer:

1. Client name;
2. Project description;
3. Project dates (starting and ending);
4. Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
5. Staff assigned to reference engagement that will be designated for work per this RFP; and
6. Client project manager name, telephone number, fax number and e-mail address.

E. Oral Presentation

Offerors selected as finalists **must** agree to provide the Evaluation Committee an opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Agency. The Evaluation Committee may request that a finalist provide an oral presentation of the proposal, and use some of that time to ask the finalist questions and seek clarifications. **A statement of concurrence must be submitted in the Offeror's proposal.**

If selected as a finalist, Offerors must agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the

Evaluation Committee, at the option of the Agency. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications.

F. BUSINESS SPECIFICATIONS

1. Cost

Offerors must complete the Cost Response Form in APPENDIX D. All charges listed on APPENDIX D must be justified and evidence of need must be documented in the proposal.

2. Resident Business or Resident Veterans Preference

Not applicable when Federal Funds are included in the contracts compensation.

3. Financial Stability

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

4. Performance Surety Bond

Not applicable

5. Letter of Transmittal Form

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

6. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B)

7. Employee Health Coverage Form

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

8. Pay Equity Reporting

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

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

Factors – correspond to section IV	Points Available
SPECIFICATIONS	Points must be assigned and defined for all factors (must total 100% of available points)
A. Scope of Work	250
B. Mandatory Specification	175
C. Organizational Experience	175
D. Organizational References (Reference questionnaire Appendix G)	50
E. Oral Presentation	50
F. Business Specifications (Cost Response, Appendix D)	300
TOTAL	1,000 points

B. EVALUATION FACTORS

A. Scope of Work: Points will be awarded based on the evaluation of the quality, thoroughness, and clarity of responses to the activities detailed in the SOW in section IV.

Factor A Element Numbers	Factor A – Scope of Work	Possible Score Range
	Provide a clear and thorough responses to the activities detailed in the Scope of Work in section IV of the RFP. Provide a narrative description of how your entity will execute the Scope of Work deliverables listed.	250

1.	The EQRO will design and conduct an annual Compliance Review to determine each MCO’s compliance with the Federal Managed Care Regulations set forth in CFR 42 § 438, Subpart D and CMS EQR Protocol 1.	(0 - 30)
2.	The EQRO will design and conduct an annual Validation of Performance Measures (PMs) in accordance with CFR 42 § 438.330(b)(1) and CMS EQR protocol 2. In addition the EQRO will assess the MCOs information system by conducting an Information Systems Capability Assessment (ISCA) in accordance with CMS EQR Protocol Appendix V.	(0 - 30)
3.	The EQRO will design and conduct an annual Validation of each MCO’s Performance Improvement Projects (PIPs) required in accordance with CFR 42 § 438.330(b)(1) and CMS EQR Protocol 3.	(0 - 30)
4.	The EQRO will design and conduct an annual Validation of each MCO’s Network Adequacy during the preceding 12 months to comply with the requirements set forth in CFR 42 § 438.68 and CFR 42 § 438.14(b)(1).	(0 - 30)
5.	The EQRO will design and conduct a Validation of Encounter Data report by each MCO in accordance with CFR 42 § 438.310(c)(2) and CMS EQR Protocol 4.	(0 - 30)
6.	The EQRO will submit to HSD/MAD an annual detailed technical report that summarizes findings on access and quality of care in accordance with CFR 42 § 438.364.	(0 - 30)
7.	The EQRO design and conduct a random monthly Nursing Facility Level of Care (NF LOC) determination audit in accordance with the 1115 Demonstration Waiver STCs to ensure NF LOC criteria are applied consistently and equitable across the New Mexico Medicaid program.	(0 - 30)
8.	Communications and Meetings.	(0 - 40)

B. Mandatory Specification: Points will be awarded based on the evaluation of the quality, thoroughness, and clarity of the responses to each of specification listed in section IV.

Factor B Element Numbers	Factor B – Mandatory Specifications Demonstrate; quality, thoroughness, and clarity in the responses to each of the mandatory specifications. Provide a narrative description to each of the mandatory specifications	Possible Score Range 175
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1.	Maintain certification by CMS as a QIO or QIO-like entity	(0 - 5)
2.	Demonstrate competency, knowledge and experience in conducting EQR activities in accordance with CMS EQR protocol	(0 - 5)
3.	Demonstrate employment of qualified EQR staff with experience and knowledge of the following: <ol style="list-style-type: none"> 1. Medicaid beneficiaries, policies, data systems, and processes 2. Managed care delivery systems, organizations and financing 3. QM/QI methods and standards 4. Research design and methodology, including statistical analysis 5. Meaningful and EQR appropriate technical report writing 6. Knowledge of and access to standards, tools, and data from NCQA, HEDIS, Quality Compass and CAHPS. 	(0 - 60)
4.	Maintain sufficient physical, technological, and financial resources to conduct EQR and EQR related activities.	(0 - 5)
5.	Demonstrate the presence of other clinical and non-clinical skills necessary to carry out EQR and EQR related activities and to oversee the work of any subcontractors.	(0 - 5)
6.	Demonstrate the independence of the EQRO and any of its subcontractors from the State Medicaid agency, or from the MCOs that they review.	(0 - 5)
7.	Submit a high level work plan including all key positions dedicated for the following EQR activities: <ol style="list-style-type: none"> 1. Validation of MCO PIPs 2. Validation of PMs 3. Review of MCO Compliance with Federal and State Standards 4. Validation of MCO Network Adequacy 5. Validation of Encounter Data reported by the MCO 6. Information Systems Capability Assessment 7. Annual Technical Report 8. Demonstrate Policy 	(1 - 80)
8.	Demonstrate policy and procedures to ensure a seamless transition of EQR activities from one entity to another	(1 - 10)

C. Organizational Experience: Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the engagements cited and the perceived validity of the response.

Factor C Element Numbers	Factor C– Organizational Experience Provide a thorough and clear response to the elements that describe the organizations experience as an EQRO.	Possible Score Range 175
1.	Demonstrate experience as an EQRO in the last three (3 Years)	(1 – 30)
2.	Listing of agencies for which the work was provided including dates and project descriptions	(1- 30)
3.	Statement of work completed on all projects as an EQRO, include demonstration of adherence to timeliness of deliverables	(1 – 40)
4.	Demonstrate Prior government related experience within the past five (5) years	(1 – 25)
5.	List of the Primary point of contact for the projects described in this RFP.	(1 – 30)
6.	Disclosure of any legal or disciplinary actions and outcomes	(1 – 20)

D. Organizational References: Points will be awarded based on evaluation of the responses to a series of questions that will be asked of the references concerning the quality of the Offeror’s services, the timeliness of services, responsiveness to problems and complaints and the level of satisfaction with the Offeror’s overall performance.

Factor D Element Numbers	Factor D – Organizational References (50 points possible)	Possible Score Range
1.	Quality of services provided Rate responses on a scale of 1 to 10 with 1 being extremely dissatisfied and 10 being extremely satisfied	(0 - 10)
2.	Timeliness of services provided Rate responses on a scale of 1 to 10 with 1 being extremely dissatisfied and 10 being extremely satisfied	(0 - 10)
3.	Responsiveness to problems and complaints Rate responses on a scale of 1 to 10 with 1 being extremely dissatisfied and 10 being extremely satisfied	(0 – 10)
4.	Level of satisfaction with services provided	(0 - 10)

	Rate responses on a scale of 1 to 10 with 1 being extremely dissatisfied and 10 being extremely satisfied	
5.	Overall performance of EQRO Rate responses on a scale of 1 to 10 with 1 being extremely dissatisfied and 10 being extremely satisfied	(0 - 10)

E. Oral Presentation: Points will be awarded based on the quality and organization of information presented, as well how effectively the information was communicated, the professionalism of the presenters and the technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror with a presentation agenda. (If no Oral Presentations are required all Offerors will receive the same amount of total points for this evaluation factor)

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

$$\frac{\text{Lowest Responsive Offer Bid}}{\text{This Offeror’s Bid}} \times \text{Available Award Points (300)}$$

A. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated in the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may include other sources of information to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The Responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The Responsible Offerors whose proposals are most advantageous to the State, taking into consideration the evaluation factors in Section IV, will be recommended for award (as specified in Section II. B.8). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A

REQUEST FOR PROPOSAL

New Mexico Medicaid
External Quality Review Organization

ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he 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 no later than indicated in Section II B (2) on page 7. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the 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: _____

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

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

Name: Katherine Leyba
Address: Medical Assistance Division
Human Services Department
2025 South Pacheco Street
Santa Fe, New Mexico 87504
Telephone: (505) 827-7715
Fax: (505) 827-3126
Email: katherine.leyba@state.nm.us

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Campaign Contribution Disclosure Form

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

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

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

The following definitions apply:

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

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

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

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

“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:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature Date

Title (position)

—OR—

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

Signature Date

Title (Position)

APPENDIX C
SAMPLE CONTRACT

STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the “**HSD**,” and **Contractor**, hereinafter referred to as the “Contractor”, and is effective as of the date set forth below upon which it is executed by the Department of Finance and Administration (DFA).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

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

2. Compensation.

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

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

(—OR— CHOICE – MULTI-YEAR)

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

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

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

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

3. Term.

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

4. Termination.

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

B. Notice; HSD Opportunity to Cure.

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

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

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

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

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

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

5. Appropriations.

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

6. Status of Contractor.

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

7. Assignment.

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

8. Subcontracting.

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

9. Release.

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

10. Confidentiality.

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

11. Product of Service - Copyright.

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

12. Conflict of Interest; Governmental Conduct Act.

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

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

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

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

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

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

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

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

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

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

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

13. Amendment.

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

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

14. Merger.

This Agreement, including any and all attachments, exhibits and/or appendices, incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

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

19. Records and Financial Audit.

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

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

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

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

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

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

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

20. Indemnification.

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

receives notice thereof, notify the legal counsel of the HSD and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

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

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

22. Employee Pay Equity Reporting.

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

in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

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

23. Invalid Term or Condition.

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

24. Enforcement of Agreement.

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

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the HSD: [name, address, email]

To the Contractor: [name, address, email]

26. Debarment and Suspension.

A. Consistent with all applicable federal and/or state laws and regulations, as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this Agreement,

had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

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

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

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

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

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

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

- 1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

- 2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

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

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

28. Non-Discrimination.

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

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

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

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

29. Drug Free Workplace.

A. *Definitions.* As used in this paragraph—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

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

1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2) Establish an ongoing drug-free awareness program to inform such employees about:

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor’s policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

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

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

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee’s conviction under a criminal

drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

- c) Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - d) Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- 3) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

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

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

30. Findings and Sanctions.

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

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

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

31. Performance.

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

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

B. Contractor agrees that, if Federal Tax Information (FTI) is introduced into Contractor's information systems, work documents, and/or other media by written agreement, any FTI as described in 26 U.S.C. § 6103, limited to FTI received from, or created on behalf of, HSD by Contractor; Protected Health Information (PHI) as defined in 45 C.F.R. § 160.103, limited to PHI received from, or created on behalf of, HSD by Contractor; or Personally Identifiable Information (PII) as defined by the National Institute of Standards of Technology, limited to PII received from, or created on behalf of, HSD by Contractor pursuant to the Services; all together referred to hereafter in Article 10 as Confidential Information, made available to Contractor shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or subcontractor of the Contractor is prohibited.

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

D. The Contractor certifies that the Confidential Information processed during the performance of this Agreement will be deleted from, or otherwise wiped, removed, or rendered unreadable or incapable of reconstitution by known means on all electronic data storage components in Contractor's facilities, including paper files, recordings, video, written records, printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed or when this Contract is terminated. If immediate purging of all electronic data storage components is not possible, the Contractor certifies that any Confidential Information remaining in any storage component will be safeguarded, using IRS Pub 1075 information storage safeguarding controls for FTI to prevent unauthorized disclosures beyond the term of this Agreement as long as Contractor is in possession of such Confidential Information.

E. Any spoilage or any intermediate hard copy printout that may result during the processing of Confidential Information will be given to the HSD or his or her designee. When this is not possible, the Contractor will be responsible for the destruction (in a manner approved by the HSD) of the spoilage or any intermediate hard copy printouts, and will provide the HSD or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

F. All of Contractor's computer systems, office equipment, written records, and portable media receiving, processing, storing, or transmitting Confidential Information must meet the requirements defined in relevant federal regulations such as IRS Publication 1075, HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), and/or any other Federal requirements that may apply to this contract. To meet functional and assurance requirements, the security features of the Contractor's environment must provide for security across relevant managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Confidential Information.

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

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

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

J. Upon request, the Contractor will provide the HSD copies of current policies and/or summaries of its current plans that document Contractor's privacy and security controls as they relate to HSD Confidential Information. This includes, at a minimum, any System Security Plans which describe the administrative, physical, technical, and system controls to be implemented for the security of the Department's Confidential Information. The plan shall include the requirement for a Contractor notification to the Department Security Officer or Privacy Officer of breaches or potential breaches of information within 24 hours of their discovery.

K. All incidents affecting the compliance, operation, or security of the HSD's Confidential Information must be reported to the HSD. The Contractor shall notify the HSD of any instances of security or privacy breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours (as stated above). Notification shall include a description of the privacy and security non-compliance issue and corrective action planned and/or taken.

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

M. The HSD will have the right to seek remedies consistent with the liability terms of this contract Agreement and/or terminate the Agreement if the Contractor or its Subcontractors or Business Associates fail to provide the safeguards or to meet the security and privacy requirements

to safeguard Confidential Information as described above, consistent with the liability and/or termination clauses herein.

N. All client files and patient records created or used to provide services under this Agreement, as between the parties, are at all times property of HSD. Upon HSD's request, all such client files and patient records shall be returned to HSD upon HSD's request or no later than the final agreed upon termination date of this contract.

32. Criminal/Civil Sanctions.

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

B. Each officer, employee, and/or subcontractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by Contractor that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know may constitute a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

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

misdeemeanor and fined not more than \$5,000. Furthermore, the Contractor will inform its officers and employees of the penalties imposed by the HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), and HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), which provide that any officer or employee of a contractor, who willfully discloses Protected Health Information in any manner to any person not entitled to receive it, may be subject to civil and criminal penalties of up to \$50,000 and up to one year imprisonment.

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

33. Inspection.

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

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

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

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

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

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

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

1. The Federal Information Security Management Act of 2002 (FISMA);
2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
4. IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies to include any Service Level Agreement requirements;
5. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
6. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

36. Authority.

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

The remainder of this page intentionally left blank.

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

By: _____ Date: _____
Brent Earnest, HSD Cabinet Secretary

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

Approved for legal sufficiency:

By: _____ Date: _____
Christopher P. Collins, HSD General Counsel

By: _____ Date: _____
Contractor

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

CRS ID Number: _____

By: _____ Date: _____
Tax and Revenue Department Representative

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

By: _____ Date: _____

Exhibit A

SCOPE OF WORK

Exhibit B

HIPAA Business Associate Agreement

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

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

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

1. Definition of Terms

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

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

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

2. Obligations and Activities of Business Associate

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this PSC [redacted]; provided that such

use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.

- i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
 - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.
 - iii. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in PSC [REDACTED], except where a “limited data set” is not practicable in order to accomplish those activities.
 - iv. Except as otherwise limited by this BAA or PSC [REDACTED], Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - v. Except as otherwise limited by this BAA or PSC [REDACTED], Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
 - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or PSC [REDACTED]. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or PSC [REDACTED], the HIPAA Standards, or otherwise as permitted or required by law. The Business Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.
- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided

to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).

- ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business

days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.

- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)] , the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department’s obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate’s contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

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

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

Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or PSC [REDACTED], and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes

aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.

- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of “Breach”, ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate’s employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department’s approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of

impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.

- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

Notification to Clients

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

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

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

5. Term and Termination

- a. Term. This BAA terminates concurrently with PSC [REDACTED], except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this PSC [REDACTED] and BAA for any reason, Business Associate shall return or destroy all PHI in its possession,

and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.

- c. If Business Associate breaches any material term of this BAA, the Department may either:
 - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this PSC [REDACTED] and BAA without liability or penalty in accordance with Article 4, Termination, of PSC [REDACTED], if Business Associate does not cure the breach within the time specified by the Department; or,
 - ii. immediately terminate this PSC [REDACTED] without liability or penalty if the Department determines that cure is not reasonably possible; or,
 - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

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

6. Penalties and Training.

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

7. Miscellaneous

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or PSC [REDACTED], shall be resolved to permit the Department to comply with the HIPAA Standards.
- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or PSC [REDACTED], the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and PSC [REDACTED] pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and PSC [REDACTED] available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or PSC [REDACTED], except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate PSC between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

APPENDIX D

COST RESPONSE FORM

Cost Response Form Sample Below

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

Description	Year	Quantity	Cost per Milestone	Total Cost
Validation of MCO Performance Improvement Projects	FY19	1		
Validation of MCO Performance Measures	FY19	1		
MCO Compliance Review	FY19	1		
Validation of MCO Network Adequacy	FY19	1		
Annual Technical Report	FY19	1		
Encounter Data Validation	FY19	1		
NF LOC	FY19	1		
Validation of MCO Performance Improvement Projects	FY20	1		
Validation of MCO Performance Measures	FY20	1		
MCO Compliance Review	FY20	1		
Validation of MCO Network Adequacy	FY20	1		
Annual Technical Report	FY20	1		
NF LOC	FY20	1		
Validation of MCO Performance Improvement Projects	FY21	1		
Validation of MCO Performance Measures	FY21	1		
MCO Compliance Review	FY21	1		
Validation of MCO Network Adequacy	FY21	1		
Annual Technical Report	FY21	1		
NF LOC	FY21	1		

Validation of MCO Performance Improvement Projects	FY22	1		
Validation of MCO Performance Measures	FY22	1		
MCO Compliance Review	FY22	1		
Validation of MCO Network Adequacy	FY22	1		
Annual Technical Report	FY22	1		
NF LOC	FY22	1		

FY19: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ _____

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section I, part C, (as amended by any current RFP amendments for the period specified above)

FY20: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ _____

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section I, part C, (as amended by any current RFP amendments for the period specified above)

FY21: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ _____

(includes all labor, materials, equipment, transportation, configuration, installation, training, taxes and profit to provide the Services described in Section I, part C, (as amended by any current RFP amendments for the period specified above)

FY22: (xx/xx/xxxx thru xx/xx/xxxx) Price:\$ _____

(includes all labor, materials, equipment, transportation, configurations, installation, training, taxes and profit to provide the Services described in Section I, part C, (as amended by any current RFP amendments for the period specified above)

APPENDIX E

NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

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

Signature of Offeror: _____ Date _____

APPENDIX F

LETTER OF TRANSMITTAL FORM

Letter of Transmittal Form

RFP#: 18-630-8000-0005

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 on behalf of this Offer:

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

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

Name _____

Title _____

E-Mail Address _____

Telephone Number _____

5. Use of sub-contractors (Select one)

___ No sub-contractors will be used in the performance of any resultant contract OR

___ The following sub-contractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

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

(Attach extra sheets, as needed)

7. ___ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section II. C.1.

___ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

___ I acknowledge receipt of any and all amendments to this RFP.

_____, 2014
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

APPENDIX G
REFERENCE QUESTIONNAIRE

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

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Form directly to:

Name: Katherine Leyba
Address: Medical Assistance Division
Human Services Department
2025 South Pacheco Street
Santa Fe, New Mexico 87504
Telephone: (505) 827-7715
Fax: (505) 827-3126
Email: katherine.leyba@state.nm.us

by the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

RFP # 18-630-8000-0005
REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

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

Name: Katherine Leyba
Address: Medical Assistance Division
Human Services Department
2025 South Pacheco Street
Santa Fe, New Mexico 87504
Telephone: (505) 827-7715
Fax: (505) 827-3126
Email: katherine.leyba@state.nm.us

Return no later than 5 pm on April 4, 2018, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the Request for Proposal number listed at the top of this page.

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

QUESTIONS:

1. In what capacity have you worked with this Contractor in the past?
COMMENTS:

2. How would you rate this firm's knowledge and expertise?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the Contractor's flexibility relative to changes in the project scope and timelines?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the Contractor?
_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

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

COMMENTS:

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

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

Name: _____ Rating:

COMMENTS:

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

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

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

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