

State of New Mexico



NM HSD
Request for Proposals (RFP)
for
Professional Services
for
Actuarial Services
and
Medicaid Program & Policy Consulting Services

RFP # 18-630-8000-0002

Issue Date: December 20, 2017

Proposal Due Date: Noon (12:00 PM MST), January 26, 2018

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I. INTRODUCTION

A. Purpose of this Request for Proposals

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to award one or more contracts through a competitive process for the procurement of actuarial and Medicaid Consulting services. Through this RFP New Mexico State Human Services Department's (HSD) Medical Assistance Division (MAD) seeks to contract for the following: (1) actuarial services for the development of risk-based managed care rates for Centennial Care and Centennial Care 2.0, and other financial analysis, and (2) consultant services to provide expertise and advice to HSD on an as-needed basis on Medicaid finances, reports, federal waivers, policies, regulations and programs.

The HSD seeks qualified offerors with the experience and expertise to perform the Actuarial and Medicaid Program and Policy Consulting services as described in the Scopes of Work (see Section IV, Components 1 and 2, of this RFP) and Terms and Condition of the Contract (see Sample Contract in Appendix J of this RFP). The successful contractor(s) shall provide the services identified in the scopes of work, under the direction of the Contract Manager and Division Director.

This RFP may result in a single award or in multiple awards. Offerors may propose their services for one or both parts of this RFP (as detailed in the Scope of Work, Section IV) – Component 1 (Actuarial Services) and Component 2 (Medicaid Program and Policy Consulting Services).

Offerors must meet the following conditions to be eligible for contract award for either Component 1 or Component 2:

1. Offeror may not be a New Mexico Medicaid provider nor a Managed Care Organization (MCO);
2. Offeror must be able to present sufficient assurances to the state that being awarded a contract will not create a conflict of interest between the contractor and the HSD, NM Medicaid MCOs, or any MCO subcontractor;
3. Offeror agrees not to enter in to any contractual relationship as a contractor or employment relationship with any MCO participating in the New Mexico Medicaid managed care program; and
4. The successful offeror may not enter in to contractual consultant services relationships with potential New Mexico Medicaid managed care offerors related to any New Mexico Medicaid managed care procurements.

Additionally, offerors responding to Component 1 in Section IV must also meet the following conditions to be eligible for contract award:

1. Offeror may not currently be a subcontractor to a company performing Medicaid services

- for the HSD;
2. Offeror may not be contracting with any tribal, state or local government entity that is a Medicaid provider or contractor;

B. Background Information - HSD

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

1. HSD Mission

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

2. HSD Goals and Objectives

HSD's first goal, "Promote Self-Sufficiency of Our Recipients," is designed to provide support services that help individuals and families move out of poverty. The Department will look to increase job readiness and access to sustainable employment and housing, increase member engagement in their care, and support families' financial stability.

HSD is working to improve the quality of care New Mexicans receive while managing health care costs. The Department's second goal, "Slow the Growth Rate of Health Care Costs and Improve Health Outcomes," will address rising health care costs as the Department looks to implement value-based purchasing and improve existing delivery models. Collaboration with stakeholders throughout the state aims to support prevention models and reduce health disparities, and the Office of the Inspector General is committed to building relationships that will assist in addressing fraud in public assistance programs.

The implementation of Centennial Care created new programs for Medicaid members to engage in their own health care, and HSD continues to offer additional options through which New Mexicans can apply for and check their benefits. Using technology and key partnerships, the Department will pursue its third goal, "Implement Person-Centric Service Models." The Department will develop and demonstrate new models of delivery, intended to streamline and improve access to public assistance programs and to promote recipients' engagement.

The Department continues to work toward improving the services provided to New Mexicans, and its fourth goal, "Improve Administrative Effectiveness and Simplicity," turns the focus inward. HSD will augment internal processes with the implementation of paperless document management. The Department will move into the final stage of executing two major information technology projects: the Child Support Enforcement System (CSES) Replacement project and the

Medicaid Management Information System (MMIS) Replacement project. Staff development plans and internal program reviews will be conducted to address areas of concern in output and efficiency.

More details can be found at:

http://www.hsd.state.nm.us/uploads/FileLinks/cf2d671604a949abdd860ed5342dcc6/Strategic_Plan_FY_2018.pdf

3. Organization of the HSD

The State of New Mexico Human Services Department is a cabinet-level Department in the Executive Branch of New Mexico State government. The HSD is headed by a Cabinet Secretary appointed by the Governor and confirmed by the New Mexico State Senate. HSD consists of the Office of the Secretary and six divisions. Only those divisions or bureaus within each division that are related to this RFP are described herein.

As of September 2017, HSD has about 2,000 employees and has maintained contracts with community-based providers throughout the state. There are more than 30 HSD/ISD field office locations statewide, with several additional satellite offices.

Office of the Secretary (OOS). The Office of the Secretary consists of the Secretary of Human Services, two (2) Deputy Cabinet Secretaries, the Office of General Counsel, the Office of Human Resources, and the Office of Inspector General.

The Secretary provides cabinet-level direction for HSD. The Office of General Counsel provides legal support for the HSD. The Office of Inspector General investigates and pursues cases of fraud and abuse, and conducts internal review for the department. The Fair Hearing Bureau administers the fair hearing process. The Office of Human Resources serves personnel needs of department employees, handles job recruitments, hiring, reorganizations and career counseling, as well as employee insurance and benefits, handles matters related to department personnel policies, provides coaching to the HSD's supervisors and managers, works with labor relations, and delivers and coordinates training programs and staff development.

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

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

the food stamp Supplemental Nutrition Assistance Program (SNAP), cash assistance, Medicaid, and other assistance programs.

Medical Assistance Division (MAD). The Medical Assistance Division manages and administers the federal Medicaid program, Centennial Care, the Children’s Health Insurance Program (CHIP), and authorized waivers. Medicaid is authorized under Title XIX of the Social Security Act. The CHIP program is authorized under Title XXI. These programs provide access to medically necessary health services for eligible individuals. They are jointly funded by federal and state funding. Federal contribution levels differ by program and vary based on relative ranking of the state in per capita income. The Division is headed by a Director who has four Deputies reporting directly to her.

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

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

Information Technology Division (ITD). The Information Technology Division provides timely and cost-effective information technology services to the HSD, its programs, divisions and offices, enabling them to fulfill the mission of HSD in an efficient and responsive manner and ensuring that HSD gains full benefit from its current and future investments in technology.

C. Overview of the NM Medicaid Program

1. Medicaid Eligibility

New Mexico Medical Assistance Programs cover approximately 40 eligibility categories. The following are the major groups of individuals eligible for Medicaid: Affordable Care Act categories for adults ages 19 up to 65 with income below 138% of the federal poverty level (FPL), parent/caretakers, pregnant women, and children below 300% of the FPL; individuals receiving Supplemental Security Income (SSI); children under the jurisdiction of the state (e.g. foster care and adoption); working disabled individuals; women with breast or cervical cancer; individuals requiring nursing home care, individuals receiving home and community-based waiver services; and limited coverage categories such as Medicare Savings Programs and family planning. As of September 2017, there are approximately nine hundred thousand (900,000) recipients on Medicaid in New Mexico.

2. Covered Services

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

3. Administration of the Medicaid Program

HSD works collaboratively with the Aging & Long Term Services Department (ALTSD), the Department of Health (DOH) and the Children, Youth, and Families Department (CYFD) in managing the Medicaid program.

Programs to monitor and control utilization and to identify fraud, abuse, and overpayments are operated by HSD's Office of Inspector General and the Medicaid Fraud and Elder Abuse unit of the New Mexico Office of the Attorney General.

4. Assistance of Other State Contractors

HSD/MAD works collaboratively with contractors, vendors, and consultants to provide certain services for the division. These other contractors include, but are not limited to: MCOs that administer the state's Centennial Care managed care program, an External Quality Review Organization (EQRO) vendor; a Recovery Audit Contractor (RAC); a claims processing and fiscal agent contractor (Conduent); and various consultants familiar with Medicaid and other federally funded programs. At times, the successful Offeror will be required to work and interface electronically with these other contractors, vendors, and consultants.

5. Fee-for-Service (FFS) Populations

Some populations eligible for Medicaid benefits are exempt from receiving services through an MCO. In those instances, HSD/MAD reimburses providers directly in a Fee for Service program. Most of these individuals are Native Americans, who may opt in to managed care (Centennial Care), but are not required to enroll in the managed care program. A large percentage of Native Americans in FFS utilize Indian Health Service facilities for the majority of their health care services. Others in the FFS program are eligible for the family planning waiver, and receive benefits limited to family planning services. Nearly 170,000 New Mexicans are covered under various Fee-for-Service programs in 2017.

6. Medicaid and Managed Care in NM

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). As of July 2017, the managed care program, known as Centennial Care, covers approximately 699,000 individuals. Four MCOs currently 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 encourage quality versus quantity of services, and maximizing opportunities to achieve administrative simplification.

Key accomplishments of Centennial Care include:

- a. Streamlining program administration by consolidating myriad federal waivers that siloed the care of populations. As noted previously, four MCOs administer the full array of services in an integrated model of care that serves nearly seven hundred thousand (700,000) of the State's population of two million (2,000,000.).
- b. Building a care coordination infrastructure that promotes a person-centered approach to care. More than nine hundred (900) care coordinators ensure Members receive services timely and according to assessed need.
- c. Increasing access to LTSS for people who previously needed a waiver allocation to receive such services. More than twenty-nine thousand seven hundred fifty (29,750) individuals receive home- and community-based services (HCBS), an increase of eleven point four percent (11.4%) per year between 2014 and 2016.
- d. Continuing to be a national leader in spending more of its LTSS dollars to maintain Members in their homes and in community settings rather than in institutional settings.
- e. Advancing payment reforms in partnership with the MCOs and, in 2017, requiring value based purchasing (VBP) arrangements for at least sixteen percent (16%) of all medical payments to providers.
- f. Demonstrating improved utilization of health care services and cost-effectiveness of the program despite significant enrollment growth. Total enrollment in the Medicaid program has grown eight and a half percent (8.5%) per year since 2014 while per capita costs have decreased by one and a half percent (1.5%) between 2014 and 2016.

The second iteration of Centennial Care, called "Centennial Care 2.0", will begin with a waiver renewal on January 1, 2019 and run for five years. Over the course of Centennial Care 2.0, New

Mexico will continue to introduce progressive quality goals focused on health outcomes, employ pilot projects (based on both geography and specific populations), and challenge its MCO partners to work cooperatively with the provider community and with the State to achieve a health care delivery system that is efficient and effective, control costs by improving the health of the people it serves, and reduces health disparities across all populations.

The populations exempt from mandatory enrollment in managed care are:

- a. Individuals who are Native American (coded as such in the eligibility and enrollment information technology system) and not in need of LTSS, or who have opted out of managed care and are receiving services through the fee-for-service program;
- b. Individuals who receive care in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID);
- c. Individuals who are enrolled only in the Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLIMB), or Qualified Individuals program;
- d. Individuals who are covered only under the Medicaid Family Planning program;
- e. Individuals who are enrolled in the Program of All Inclusive Care for the Elderly (PACE);
- f. Individuals who receive HCBS through the 1915(c) waivers for individuals with an Intellectual and Developmental Disability (IDD) and for individuals who are Medically Fragile (MF) (these individuals receive only acute care services in Centennial Care); and
- g. Individuals who receive emergency services under the Emergency Medical Services for Aliens (EMSA) program.

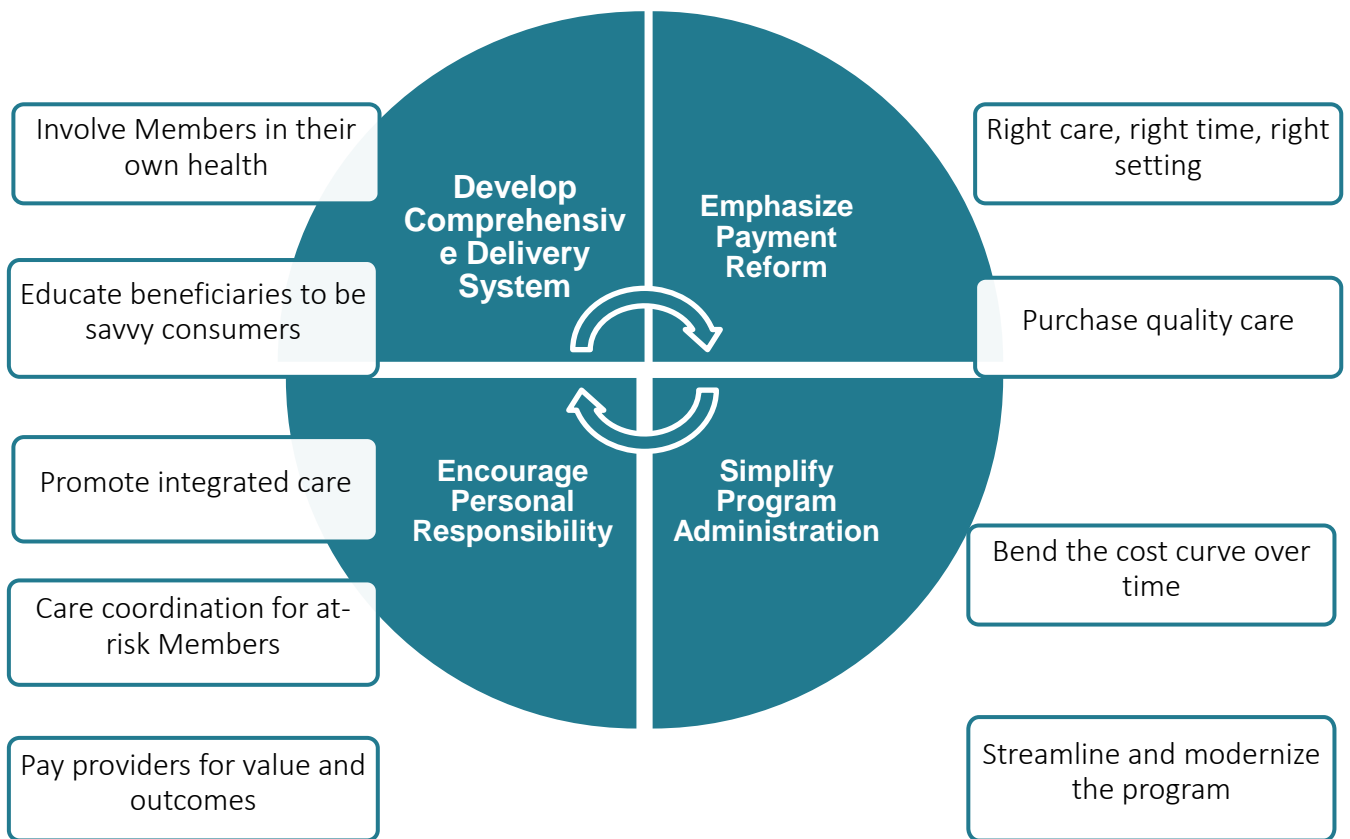
7. Centennial Care 2.0

Building on the successes and accomplishments of Centennial Care, HSD has identified opportunities for improvements and other modifications that will continue to advance the original principles of Centennial Care. HSD does not intend to make major programmatic changes to the program, but rather will build on the original principles and program successes and, where appropriate, implement reforms based on identified opportunities and the future vision for the State's Medicaid program. Centennial Care 2.0 will:

1. ***Target Care Coordination*** by increasing care coordination at the provider level, improving transitions of care, and leveraging partnerships to better serve high needs populations.
2. ***Strengthen Physical Health and Behavioral Health (BH) Integration*** by expanding CareLink NM, building BH workforce capacity, and expanding capacity through tele-health and tele-psychiatry.
3. ***Improve Long-Term Services and Support (LTSS) programs*** by increasing access to home and community-based services, implementing ongoing automatic Nursing Facility Level of Care (NF LOC) approvals, improving coordination of benefits for dually-eligible Members, and expanding Value-Based Purchasing (VBP) arrangements to drive quality in nursing facility care and personal care services.

4. **Expand Payment Reform** Initiatives by increasing VBP payment arrangements, improving provider readiness to participate in risk-based payment arrangements, and aligning the Safety Net Care Pool with improved quality outcomes.
5. **Increase Member Engagement and Personal Responsibility** by advancing the Centennial Rewards program and requiring modest copayments and premiums for certain populations.
6. **Streamline Benefits and Eligibility** by redesigning a single benefit package for most Medicaid adults and higher-income children, developing modest buy-in premiums for adult dental services, changing eligibility requirements for Family Planning services, and eliminating the three-month retroactive eligibility period for most Members.

CENTENNIAL CARE 2.0



Changes in Centennial Care 2.0 for 2019 and beyond are reflected in the federal Section 1115 demonstration waiver renewal application to CMS, which was developed with input from stakeholder meetings, public comments and tribal consultations during 2016 and 2017. The 1115 waiver renewal application for Centennial Care 2.0 was submitted to CMS in December 2017. CMS approval and negotiations on the waiver renewal for Centennial Care 2.0 will occur in 2018.

8. MMIS Replacement (MMISR)

Starting in 2017 and during the procurement and contract for actuarial and consulting services (2018 and beyond) a new Medicaid Management Information System (MMIS) will be developed and implemented by HSD and its contractors. Contractors under contract during that time must exhibit flexibility and nimbleness in working with changing systems and business processes that will result from the MMIS replacement. Contractors must understand that NM Medicaid systems and processes as they exist now (in late 2017) will most likely change in the next several years, and HSD's contractors will work with HSD to effectuate a smooth transition and effective implementation of the new MMIS and any changes in systems and processes that result from it.

As part of the MMISR project, the department will be implementing new data warehousing and analytics tools. Contractors providing Medicaid Program and Policy Consulting Services, as identified in the Scope of Work, will be required to utilize the new data warehousing and analytics tools once they are made available. Contractors are required to utilize their own analytics tools until the new tools are available. The department expects the new analytics tools to be available by mid-2019 (subject to change).

D. Summary Scope of Work

HSD requests proposals for providing Actuarial and rate setting services and Medicaid Program and Policy Consulting services as noted in the Scopes of Work in Section IV, Components 1 and 2, of this RFP. The purpose of this competitive RFP is to select one or more Offerors with the experience and expertise to perform the requirements described within.

E. Scope of Procurement

The scope of the procurement includes the operation and support services required to accomplish those tasks defined in the Scopes of Work and Sample Contract. The contract(s) resulting from this RFP shall begin upon approval by the State of New Mexico's Department of Finance and Administration (DFA) on July 1, 2018. The term of the contract signed as a result of this RFP will be for four (4) years.

F. Procurement Manager

HSD has designated a Procurement Manager who is responsible for the conduct of this procurement. 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.

Offerors may contact only the Procurement Manager regarding this procurement. Other State employees, consultants, and agents do not have the authority to respond on behalf of HSD. HSD

shall not assume responsibility for any answers or clarifications provided by other HSD staff, or by any other State employee or agent. An Offeror that contacts another State employee or agent in violation of this requirement will be excluded from further participation in the procurement. The Procurement Manager's decision on any matter regarding this procurement shall be final. Contact information for the Procurement Manager is as follows:

Daniel Clavio
New Mexico Human Services Department
Ark Plaza
PO Box 2348
Santa Fe, NM 87504-2348

Phone: (505) 827-1345
Email: Daniel.Clavio@state.nm.us
Fax: (505) 827-1345

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

Daniel Clavio
New Mexico Human Services Department
Ark Plaza
2025 S. Pacheco Street
Santa Fe, NM 87504

G. Procurement Library

Offerors can find documents relevant to this procurement in several places on the HSD website, including: <http://www.hsd.state.nm.us/centennial-care-2.0.aspx>; http://www.hsd.state.nm.us/Centennial_Care_RFP.aspx; <http://www.hsd.state.nm.us/LookingForInformation/open-rfps.aspx>; and <http://www.hsd.state.nm.us/LookingForInformation/closed-rfps.aspx>. Many other documents and reports on New Mexico's Medicaid Program can be found through-out the HSD website. Offerors are advised to check the websites periodically to see if new and revised material has been added.

H. Definition of Terminology

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations. Additional definitions and acronyms can be found in the Sample Contract (Appendix J).

“Agency” means the Human Services Department.

“Authorized Purchaser” means an individual authorized by a Participating Entity to place orders against this contract.

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

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

“Centennial Care” means the New Mexico Medicaid managed care program, including Centennial Care 2.0 (starting 1/1/19).

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

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

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

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

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

“Evaluation Committee” means a body appointed 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.

“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.

“HIPAA” refers to the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §160, et seq., as amended or modified, which provides federal protections for personal health information that is held by providers, and guarantees patient rights with respect to that personal health information.

“HSD” means the Human Services Department.

“Human Services Department, Medical Assistance Division (HSD/MAD)” means the administrative agency within the executive department of New Mexico state government established under Chapter 9, New Mexico Statutes Annotated 1978, or its designee, including but not limited to agencies of the Human Services Department.

“Hourly Rate” means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, and, if appropriate, subcontractor personnel.

“IT” means Information Technology.

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

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

“MCO” means Managed Care Organization, the organizations that are contracted with the HSD to administer the Medicaid managed care program.

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

“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 any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.

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

“Provider” means, unless otherwise specified, a health care practitioner enrolled in the New Mexico Medicaid program.

“Project” means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project

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

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

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

“Responsive Offer” or 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.

“Secretary” means, unless otherwise specified, the Secretary of the New Mexico Human Services Department.

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

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

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

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

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

“Subcontract (Third-Party Contract)” means a written agreement between the Contractor and a third-party, or between a subcontractor and another subcontractor, to provide services to the Contractor or subcontractor.

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. Sequence of Events

The schedule set forth herein represents HSD’s best estimate of the schedule that will be followed. Unless stated otherwise, items will be due at Close of Business on the dates specified below. If a component of this schedule – such as *Submission of Proposal* – is delayed, the rest of the schedule will likely be shifted by the same number of days. The Procurement Schedule is subject to change at HSD’s discretion. The Procurement Manager will make every effort to adhere to the following schedule:

Actuarial and Consulting Services Procurement Schedule	
Event	Date*
Release RFP and Procurement Library	December 20, 2017
Deadline for Offerors to submit Mandatory Acknowledgement of Receipt Form to HSD	December 29, 2017
Deadline for Offerors to submit formal written questions for HSD response	December 29, 2017
Release of HSD responses to written questions and Amendment(s) to RFP	January 12, 2018
References Due – Deadline: 5:00 pm MST	January 25, 2018
Proposals Due - Deadline: NOON (12:00 pm MST)	January 26, 2018
Evaluation and Scoring of Proposals	Jan. 27 – February 16, 2018
Notice of Intent to Award	February 23, 2018
Contract Negotiations	February 26 – March 2, 2018
Signature process (Contractors and State)	March 2 – May 5, 2018
Contract Award Date	May 5, 2018
Protest period -15 days from contract award	May 16 – June 2, 2018
Contract Effective Date	July 1, 2018

**Dates subject to change based on number of responses and final approval from federal partners, if applicable.*

Notes:

- A pre-proposal conference will NOT be held.
- Oral presentations will NOT be held.
- All dates are subject to change at HSD’s discretion.
- References are to be submitted directly to HSD by the Reference source, not by the Offeror, independent of the other Proposal materials.

B. Explanation of Events

The following paragraphs describe the activities listed in the sequence of events shown in Section 2.1 above.

1. Issuance of RFP

This RFP is being issued on behalf of the New Mexico State HSD on December 20, 2017. The RFP and amendments, if any, may be downloaded from the following address:
<http://www.hsd.state.nm.us/>

2. Acknowledgment of Receipt Form and Distribution List

Potential Offerors should hand-deliver or return by email or by registered or certified mail the Acknowledgment of Receipt Form that accompanies this document (Appendix A of this RFP) to have their organization 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 no later than the date stated in Section 2.1, Procurement Schedule. **Submission of this form to HSD is a Mandatory Requirement to participate in the procurement process.** Failure to return this form shall constitute an agreement that the potential Offeror's organization name shall not appear on the distribution list nor participate in the procurement process. **Failure to appear on the distribution list disqualifies an organization from submitting a proposal.**

At a minimum, the procurement distribution list will be used to distribute written responses to questions and any RFP amendments and notices.

3. Deadline to Submit Written Questions

Potential Offerors may submit formal written questions about the intent or clarity of the RFP and its appendices. Offerors shall submit all questions in writing by email to the Procurement Manager no later than the date stated in Section 2.1, Procurement Schedule. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document that forms the basis of the question. For the submission of all questions in writing, ***Offerors must use the format provided in Appendix I – Template for Submittal of Questions, submitted as a Word document.***

4. Response to Written Questions / RFP Amendments

HSD will provide written responses to written questions -- and any RFP amendments will be distributed -- by the date stated in Section 2.1, Procurement Schedule (intended date) to all potential Offerors whose organization name appears on the procurement distribution list. HSD's written response to questions constitutes a formal response but does not constitute an amendment to the RFP. If warranted, the RFP will be amended at a later date to address the specific issues. HSD's response to a question will note if an amendment is necessary and forthcoming. The identity of the organization submitting the question(s) will not be revealed in the response.

HSD shall make every effort to provide answers as close to the deadline as possible. HSD reserves the right to determine, at its sole discretion, appropriate and adequate responses to written comments, questions, and requests for clarification.

HSD reserves the right to amend the RFP (including all appendices) any time before the closing date for proposal submission. Amendments shall be sent to all Offerors whose organizations are on the procurement distribution list, having submitted an Acknowledgment of Receipt Form pursuant to Section 2.2.2 of this RFP. Amendments will be posted to the HSD website.

5. Submission of Proposals

The entire proposal (including the Mandatory Requirements, Technical Proposals, Exhibits, and Cost Proposals) must be received for review and evaluation by the Procurement Manager, by Noon (12:00 pm MST) on the date stated in Section 2.1 Procurement Schedule. The Procurement Manager will record the date and time of receipt on each proposal. A late proposal shall not be accepted, and an Offeror's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

Proposals must be addressed and delivered to the Procurement Manager. Proposals must be sealed, and the outside of the package must be labeled to clearly indicate a response to the Actuarial Services Request for Proposal. (See Section 3 of this RFP for additional information.) Proposals submitted by facsimile and email will not be accepted. A proposal must respond to the written RFP and any RFP exhibits, attachments, and amendments.

HSD will not reimburse the Offeror for any costs of proposal preparation. The Offeror shall not distribute the proposal to any entity not specified in this RFP, nor shall the Offeror share its proposal with other potential Offerors.

A public log will be kept of the names of all Offeror organizations that submit proposals. Pursuant to NMSA 1978, § 13-1-116, the contents of any proposal shall not be disclosed to competing Offerors or the general public before the Contract is awarded.

6. Proposal Evaluation

Proposals will be evaluated by an Evaluation Committee. This process will take place as indicated in the sequence of events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions to clarify 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.

7. Notice of Intent to Award Contract

Based on HSD’s selection of the successful Offeror(s), the Procurement Manager shall send the successful Offeror(s) a notice of intent to award.

8. Contract Negotiation and Finalization

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per the schedule in Section 2. A., Sequence of Events, or as soon thereafter as possible. This date is subject to change at the discretion of the relevant Agency Procurement office(s). If mutually agreeable terms cannot be reached with the apparent most advantageous Offeror(s) 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.

9. Contract Awards

HSD reserves the right to negotiate with the successful Offeror(s) regarding provisions that are in addition to or different from those contained in this RFP, including the Scope of Work (Section IV) and Appendix J of this RFP (Sample Contract). The contents of this RFP, as revised and/or supplemented, and the successful Offerors’ proposal(s) will be incorporated into and become part of the Contract, at HSD’s discretion.

The Contract(s) shall be awarded to the Offeror(s) 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(s) may or may not have received the most points. The award(s) is/are subject to appropriate HSD and State approval.

10. Protest Deadline

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

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.

11. Contract Effective Date

The Contract(s) is/are subject to the appropriate State approvals. No compensable work may be performed by the Offeror(s) until the effective date of the fully executed and approved Contract(s). The intended effective date for the Contract(s) is/are July 1, 2018.

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 4 of this RFP.

2. Incurring Cost

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

3. Contractor(s) Responsibility

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

4. Subcontractors/Consent

Proposed use of Subcontractors must be clearly explained in the proposal, and Major Subcontractors must be identified by name. The Contractor(s) shall not assign, transfer, or delegate any key functions to a Subcontractor without the explicit prior written approval of HSD. The Contractor(s) shall be wholly responsible for the entire contract performance, whether or not subcontractors are used. The Offeror's list of proposed Subcontractors should be submitted using the form in Appendix H and included in the Exhibits section of the Technical Response Binder.

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. An 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, will be considered firm for three hundred sixty-five (365) days after the due date for receipt of proposals or one hundred eighty-five (185) days after the due date for the receipt of a Best and Final Offer, if one is submitted. Time will be tolled for the period of any protest, including appeal times through New Mexico courts.

8. Disclosure of Proposal Contents

Proposals will be kept confidential until Contract(s) is/are awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “proprietary” or “confidential,” subject to the following requirements. Blanket labeling of the entire document as “confidential” or “proprietary,” however, shall result in the proposal being determined non-responsive.

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. Confidential data is normally restricted to confidential financial information concerning the Offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, §§ 57-3A-1 to 57-3A-7. 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 Procurement Manager shall examine the Offeror’s request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

The State of New Mexico maintains the right to use all ideas, or adaptations of those ideas, contained in any proposal received in response to this RFP. Selection or rejection of the proposal shall not affect this right.

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

HSD 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 HSD and an Offeror will follow the format specified by HSD and contain the terms and conditions set forth in the Sample Contract, Appendix J of this RFP. However, HSD reserves the right to negotiate with a successful Offeror provisions in addition to or different from those contained in this RFP or the Sample Contract. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the Contract. Only terms and conditions that are additional, and agreed to by HSD, as evidenced by inclusion in the duly executed Contract, will be included in the Contract.

If an Offeror objects to any of HSD's terms and conditions as contained in this Section or in the Sample Contract (Appendix J of this RFP), that Offeror must propose specific alternative language as part of its response to this RFP. HSD may or may not accept the alternative language. HSD's decision on alternative language is final and cannot be

appealed. General references to the Offeror's terms and conditions, or attempts at complete substitutions, are not acceptable to HSD, and will result in disqualification of the Offeror's proposal.

Proposed changes are to be included in the Exhibits section. Offerors must provide a brief discussion of the purpose and impact (if any) of each proposed change, followed by the specific proposed alternate wording (see 2.3.16 below). Any proposed additional terms and conditions, which may be the subject of negotiations will be discussed only between HSD and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

16. Offeror Terms and Conditions

Offerors must submit with proposals a complete set of any additional terms and conditions that they want included. General references to the Offeror's terms and conditions, or attempts at complete substitutions, are not acceptable to HSD and will result in disqualification of the Offeror's proposal.

HSD reserves the right to negotiate such requested terms and conditions. Only terms and conditions that are additional, and agreed to by HSD, as evidenced by inclusion in a duly executed Contract, will be included in the Contract between the parties. Changes proposed by an Offeror are to be included in the Exhibits section.

The opportunity for an Offeror to propose changes in terms and conditions is purely optional, not a mandatory requirement. No evaluation or scoring points are associated with this option.

17. 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 Responsive Offeror or fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

18. 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.

19. Change in Contractor Representatives

HSD 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.

20. 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.

21. HSD Rights

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

22. Right to Publish

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

23. Ownership of Proposals

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

24. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (email). Offerors must have a valid email address to receive this correspondence.

25. Use of Electronic Versions of this RFP

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

26. 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) declined health insurance due to having 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. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information
<http://www.insurenewmexico.state.nm.us/>.
- 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.

27. Campaign Contribution Disclosure Form

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

28. 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, offeror will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

29. 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:
- B. 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;
- 1) Violation of Federal or state antitrust statutes related to the submission of offers; or
 - 2) 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) An Offeror has 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 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 this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous due to changed circumstances.
 - 7) A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.
 - 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 this Agreement. If, during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document, the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

C. New Mexico Preferences

The New Mexico Preferences (New Mexico Business Preference and New Mexico Resident Veterans Business Preference) shall not apply when the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

This section describes the format and organization of the Offeror's response. Failure to conform to these specifications may result in disqualification of the proposal.

A. Number of Responses

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

B. Number of Copies

Offerors should deliver:

1. **Binder 1 “Technical Proposal Binder”** - one (1) original and six (6) identical hardcopies of their Mandatory Requirements, Technical Proposal(s), and Exhibits. The original and all copies shall be in separate labeled binders. The original must be identified as such on the front cover, and the copies shall also be identified as such. If Offeror’s proposal is for both Actuarial Services and Medicaid Program and Policy Consulting Services components, please separate types of services with dividers.
2. **Binder 2 “Cost Proposal Binder”** - one (1) original and two (2) copies of the Cost Proposal(s). The original and all copies shall be in separate labeled binders. The original must be identified as such on the front cover, and the copies shall also be identified as such. If Offeror’s proposal is for both Actuarial Services and Medicaid Program and Policy Consulting Services components, please separate types of services with dividers.

Each Offeror must also include three (3) sets of digital files on CDs of all materials (Mandatory Requirements, Technical Proposal(s), Exhibits, and Cost Proposal(s)) on three (3) CDs placed in the sealed package with the original Technical Proposal. The CDs shall include searchable PDF files or MS Word files of the entire set of proposals.

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

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

1. A file with the **complete proposal response(s)**, including any confidential and/or proprietary information within that response component.
2. A file of the 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.

D. Proposal Format

All proposals must be typewritten on standard 8 ½” x 11” paper. The pages should have one-inch margins, and the font size shall be no smaller than Times New Roman 12. The proposal must be set at a multiple-space setting of 1.15 lines within a paragraph with a blank line between paragraphs. Larger paper (up to 11” x 17”) and smaller fonts are permissible only for charts, diagrams, spreadsheets, etc. The documents must be placed in sturdy binders with tabs delineating each section. Offerors must comply with the page-limit requirements specified in Section 6 of this RFP.

E. Proposal Content and Organization

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror’s ability to meet the requirements of the RFP. Technical Proposals must comply with the page limits noted in Section V, Paragraph G of this RFP. Exhibits specified in Section 5 of this RFP will be placed in the Exhibits section and will not be counted towards the page limits in the Technical Proposal. **Pages that exceed the page limits specified in Section V of this RFP will not be reviewed by the Evaluation Committee.**

The entire submission shall be submitted in a total of two (2) binders: one (1) “Technical Proposal” binder which includes Mandatory Requirements, Technical Proposal(s), and Exhibits, and one (1) “Cost Proposal” binder for the Cost Proposal(s).

1. Table of Contents

The first page in each binder must be the table of contents. It must contain a list of all sections of the proposal in the binder and the corresponding page numbers. The table of contents in the electronic file must be linked to appropriate sections in the proposal.

2. Page Numbers

The pages in each binder must be numbered sequentially and include the proposal type (e.g., Technical – pg 1). Numbering of pages in binders should continue in sequence through each separate section.

3. Dividers

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

The Technical Proposal Binder:

a) Mandatory Requirements

- 1) Signed Letter of Transmittal
- 2) Table of Contents
- 3) Compliance and Acceptance Statement

- 4) Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
- 5) Signed Campaign Contribution Disclosure Form
- 6) Signed New Mexico Employees Health Coverage
- 7) Signed Conflict of Interest Affidavit
- 8) Statement of Mergers, Acquisition, or Sales
- 9) List of References (two References for each service component if submitting for both)
- 10) Proposed Subcontractors Forms
- 11) Financial Reports
- 12) Performance Bond Statement
- 13) Proposal Summary (one Summary for each service component if submitting for both)
- 14) If applicable: Lobbying Disclosure Form, OMB Form LLL

b) Technical Proposal(s), if submitting proposals for two (both) service components:

- 1) Actuarial Services Section
- 2) Medicaid Program & Policy Consulting Section

c) Exhibits, with dividers separating the following sections:

- 1) Optional: proposed changes to Terms & Conditions and Contract Deviations
Exhibits from Technical Responses, Actuarial Services Component
- 2) V.J.1.b. (iii). – Resumes of Actuarial Team
- 3) V.J.1.c. (i). – Licenses and Certificates
Exhibits from Technical Responses, Technical Proposal, Medicaid Program and Policy Consulting Services
- 4) V.J.2. a. (3). – Resumes of Medicaid Consulting Team
- 5) Other exhibits provided by the Offeror.

Note that very large documents available online can be indexed and described (labelled) with an associated link to the specific document(s). Those large documents do not have to be physically included in the Exhibits section.

The **Cost Proposal Binder**: if submitting cost proposals for two (both) services components:

- 1) Actuarial Services Section
- 2) Medicaid Program and Policy Consulting Section

F. Responses

All information must be in response to a specific requirement or question and clearly referenced. HSD is not required to -- and will not search for -- information or responses in other sections of the proposal unless the reference is for an exhibit (placed in the Exhibit section). A policy,

brochure, manual, or reference to a policy, brochure, or manual does not constitute an adequate response unless specifically requested. Exhibits must be referenced and described in the narrative and cannot contain a continued response. The Offeror shall refer the reader directly to an exhibit number. Exhibits shall not be counted toward the technical proposal page limits. Offerors may only submit exhibits in response to explicit questions or requests as specified in this RFP; any unsolicited exhibit materials will not be reviewed by the evaluation teams.

IV. DETAILED SCOPE(S) OF WORK (Two Components)

Actuarial Services and Medicaid Program & Policy Consulting Services

Offerors may submit a proposal for one or both of the components included in this section.

A. Component 1: Actuarial Services

The New Mexico Human Services Department (HSD) seeks a qualified actuarial services contractor to develop, set and manage risk-based capitation rates for the New Mexico Centennial Care Medicaid Program.

The HSD establishes capitation rates for long term care and behavioral health based on gender, age, and geographic areas and establishes risk adjusted rates for physical health utilizing the Medicaid Rx model. Capitation rate development must be completed in the fall of every calendar year. Capitation rate updates may occur anytime during the year.

The Contractor shall perform the following tasks:

1. Develop, set, and certify actuarially sound capitation rates for all managed care organization (MCO) cohorts under Centennial Care. Capitation rates should be developed based on factual data and may be developed by line of business, i.e. physical health, behavioral health, and long term care services for the Standard Medicaid Services Benefit Plan, and physical health and behavioral health for the Other Adult Group. Rates must meet actuarial standards and must be certified by a date specified by the HSD. This work includes, but is not limited to the following:
 - a.) Develop the managed care cohorts and capitation rates using a variety of parameters including, but not limited to, recipients' age, gender, category of eligibility, level of care, and geographic location;
 - b.) Identify medical service utilization patterns by category of service and medical and administrative cost profiles for all managed care cohorts and major lines of business;
 - c.) Develop or assist in the development of capitation premium efficiency adjustments;
 - d.) Analyze the financial statement data of the managed care plan with a focus on relevant issues affecting capitation rate development;
 - e.) Analyze any changes resulting from federal and/or state requirements, or HSD programmatic changes that will be effective in the state fiscal year and use the data to calculate adjustment factors to be applied to the existing capitation rate cells;
 - f.) Calculate actuarially sound capitation rate cells in accordance with the Centers for Medicare and Medicaid (CMS) rate setting checklist guidance and Medicaid managed care rules;

- g.) Certify that the managed care capitation rates comply with all requirements for managed care rate setting as described in the Balanced Budget Act of 1997 and Medicaid managed care rules;
 - h.) Participate in and provide support for the HSDs' rate setting discussions and meetings (some of which will take place in Santa Fe, NM) with managed care organizations and, occasionally legislators, legislative staff, and other stakeholders;
 - i.) Participate in periodic meetings with HSD staff to discuss the parameters, priorities, methodology, and ongoing results of managed care capitation rate development in each rate cycle, including, but not limited to:
 - (1.) Providing documents and data, as directed by HSD staff, to discuss at these meetings;
 - (2.) Working collaboratively with HSD staff to improve the accuracy and efficiency of the existing data sources and new data sources used for capitation rate development;
 - (3.) Working collaboratively with HSD staff and other HSD vendors to improve the accuracy and efficiency of capitation rate development methodologies;
 - (4.) Providing the HSD with reports and calculations in the format(s) specified by the HSD, including all formulae, databases, data sets, analyses, and documents relevant to the capitation rate setting process.
 - j.) Ensure that the methodology used to develop overall rate and rate components is clear and can be easily comprehended by the State, MCOs, and other outside entities.
2. Update the capitation rates during the state fiscal year based on factual data, trends in pricing, changes resulting from federal and/or state requirements, program changes or changes in coverage, and certify those rates for Centennial Care. Activities related to updating capitation rate setting include, but are not limited to:
- a) Analyzing inflation and economic trends;
 - b) Analyzing the financial statement data of the managed care plan with a focus on relevant issues affecting capitation rate development;
 - c) Analyzing any programmatic changes that will be effective in the FY and use the data to calculate adjustment factors to be applied to the existing capitation rate cells;
 - d) Developing or assisting in the development of rate methodology for any new program(s) that may be implemented during the fiscal year or contract period;
 - e) Calculating actuarially sound capitation rate cells;
 - f) Producing a report that provides a detailed description of the methodology used for developing the capitation rates;
 - g) Providing actuarial certification as to the soundness of the rates;
 - h) Preparing all presentation material, attend and participate in the meetings to promote approved recommendations;

- i) Providing the HSD with reports and calculations in the format(s) specified by the HSD, including all formulas, databases, data sets, analyses, and documents relevant to the capitation rate updating process.
3. Develop and/or update risk adjusted rates for acute care services to reflect differences in the financial risk assumed by competing managed care organizations using the Medicaid Rx model or other risk adjustment system that HSD approves semi-annually or annually at HSD's discretion. The Contractor shall perform the following tasks:
 - a) Compare and analyze preliminary scores using a prescription drug risk model;
 - b) Provide a report that includes clinical information about the risk assigned to each health plan;
 - c) Set and certify the prospective capitation rates for each population group;
 - d) Develop or assist in the development of a risk adjustment methodology.
4. Perform financial analyses and reconciliations including, but not limited to the following:
 - a) Analyze managed care organization financial reports and identify under or overage payments related to Hepatitis C risk corridor;
 - b) Analyze managed care organization financial reports and identify under and overage payments related to third party liability;
 - c) Analyze managed care organization financial reports and identify under and overage payments related to underwriting gains;
 - d) Develop or assist with oversight of Value Based Purchasing contracts and pricing arrangements with the managed care organizations;
 - e) Analyze payment additions (taxes and assessments, such as NMMIP HIX, etc.);
 - f) Perform activities related to Managed Care contractual reconciliations (e.g., retroactive reconciliation, Community Benefit, LTSS patient liability, and Centennial Rewards programs) under Centennial Care;
 - g) Perform activities related to the contract risk corridor evaluation for Hepatitis C drugs, and annual underwriting gain limitation under Centennial Care;
 - h) Assist with MCO monetary penalty peer reviews;
 - i) Monitor and report on budget neutrality as required by federal guidelines; and
 - j) Assist HSD with the development of the 1115 Waiver application and with the data production necessary to address program outcomes and policy effectiveness.
5. At the end of the contract period, work cooperatively with the HSD and any of its specified contracting organizations to develop and successfully implement a plan to transition all data, methodologies, documentation, and ongoing projects to the succeeding contracting organization, vendor, or firm or to the state.

B. Component 2: Medicaid Program and Policy Consulting Services

The New Mexico Human Services Department (HSD) seeks a qualified Medicaid Consulting Services contractor for the New Mexico Medicaid Program to provide the HSD with consultation services on Medicaid program and/or policy issues and directions.

1. Provide Medicaid Consultation Services by a dedicated New Mexico team conducting the tasks outlined below. If a single offeror bids on both parts of this RFP, this consulting team should be identified separately from the actuarial team. This work includes, but is not limited to:
 - a) Assist HSD with planning, reporting and implementation of its 1115 Demonstration Waiver(s) for Centennial Care. This work includes, but is not limited to the following:
 - 1) Assisting HSD in developing and/or conducting the MCO contractor readiness review processes;
 - 2) Evaluate the enrollment and financial performance of Managed Care Organizations and their provider networks;
 - 3) Provide encounter data validation analysis and other assistance as required to address the Waiver's Standard Terms and Conditions;
 - 4) Perform document development, research and other ad hoc projects necessary to support the 1115 Waiver implementation and reporting requirements.
 - b) Assist HSD with 1115 Waiver Renewal or Amendments as needed:
 - 1) Assist with project management for the HSD 1115 Waiver application process, and ensure that actions and timetables are coordinated with the MMIS Replacement (MMISR) Project;
 - 2) Perform document development, research and other ad hoc projects necessary to support both the application and the systems testing that will be required to ensure full operational success with respect to waiver changes in the existing and replacement MMIS;
 - 3) Assist HSD during federal Waiver development and negotiations with CMS, including but not limited to:
 - (a) Participate in periodic conference calls with HSD related to the Waiver Renewal;
 - (b) Participate in conference calls between HSD and CMS;
 - (c) Prepare materials, information, or analysis, as needed, for HSD to supply to CMS; and
 - (d) Assist HSD with reviews and responses to the Waiver Renewal Special Terms and Conditions (STCs).

- c) Assist HSD with Managed Care Procurement (if necessary):
 - 1. Assist HSD with the development of managed care procurement evaluation and scoring criteria;
 - 2. Assist HSD with the development of adjustments to the procurement capitation rates, reflecting final provisions of the waiver.

- d) Provide HSD with additional consultation services, and complete other work as requested by HSD, which may include, but is not limited to, the following:
 - 1. Assist with program activities associated with the implementation of the Centennial Care program, such as State Plan Amendments (SPAs), contract amendments, and regulatory changes such as policy requirements for Home & Community Based Services (HCBS);
 - 2. Analyze proposed adjustments to provider reimbursement rates;
 - 3. Assist HSD in responding to Centers for Medicare & Medicaid Services (CMS) requirements and in pursuing CMS approval of programmatic changes;
 - 4. Assist HSD with Health Home expansion, including but not limited to, developing per member per month, assisting with operational issues, outcome measures, SPA submission, and CMS correspondence and conference calls;
 - 5. Assist HSD with the development and review of Centennial Care managed care contract updates, managed care policy updates, letters of direction, presentations, etc.;
 - 6. Assist HSD with the development and implementation of a Home Visiting program;
 - 7. Assist HSD with the development and implementation or update of an Electronic Visit Verification (EVV) system for Self-Directed Personal Care and Medicaid Homemaker services;
 - 8. Assist HSD with the development and implementation of an Indian Managed Care Entity (IMCE);
 - 9. Assist HSD with the development of program reports, including report revisions as necessary throughout the term of the contract;
 - 10. Assist with the development and implementation of the auto-assignment methodology;
 - 11. Assist with the quarterly calculations for the Legislative Finance Committee Performance Measures based on the Healthcare Effectiveness Data and Information Set (HEDIS);
 - 12. Assist HSD with the development and implementation of programmatic audits.
 - 13. Assist HSD with utilizing data to manage the health outcomes of the Medicaid population; and

14. Assist HSD with merging clinical, financial, and operational data to create views, dashboards, and reports that are used to measure the performance of the Medicaid program and the outcomes of the Medicaid population.
- e) Work collaboratively with HSD on the Mental Health Parity and Addiction Equity Act (MHPAEA) requirements. The Contractor will assist HSD with conducting parity analyses as required by CMS and advise HSD on attaining parity compliance.
 - f) Provide professional expertise in areas necessary for the successful operation of the Medicaid program including but not limited to financial expertise, data analytics, clinical expertise, systems expertise, quality expertise, etc.
 - g) At the end of the contract period, work cooperatively with the HSD and any of its specified contracting organizations to develop and successfully implement a plan to transition all data, methodologies, documentation, and ongoing projects to the succeeding contracting organization, vendor, or firm or to the state.

V. EVALUATION

A. Evaluation Process

HSD shall conduct a comprehensive, fair and impartial evaluation of proposals received in response to this RFP. HSD shall be the sole judge in the selection of the successful Offeror(s).

Evaluation of the proposals shall be conducted in the following phases.

1. Phase I: Review of Mandatory Requirements to ensure that all mandatory requirements are met.
2. Phase II: Review and scoring of Technical Proposals, Exhibits, and References.
3. Phase III: Review and scoring of the Cost Proposals.
4. Phase IV: Compilation of all scores and Award of the Contract to selected Offeror(s).

Phase I: The determination of whether the proposal meets Mandatory Requirements noted in Section V of this RFP, including receipt of the Acknowledgement of Receipt Form (see Section II). All proposals shall be reviewed for compliance with the requirements stated within the RFP and all its appendices. Proposals deemed nonresponsive shall be eliminated from further consideration.

Phase II: The review of the Technical Proposals (including Exhibits) and References to evaluate and score the quality of the responses.

Phase III: The review of the Cost Proposals.

Phase IV: Scores from each Offeror's Technical Proposal, References, and Cost Proposal will be totaled. The Offeror whose proposals and scores are most advantageous to HSD shall be recommended for Contract awards as specified in Section II of this RFP.

B. Evaluation Committee

HSD shall establish an Evaluation Committee that will evaluate the proposals. HSD may, at its discretion, designate Members to the Evaluation Committee who are employees of other State agencies and who have expertise in specific areas of the RFP.

It is imperative that all responses be complete and independent of information or responses in other sections of the proposal. Responses to RFP questions shall not reference other sections of the proposal unless the reference is for an exhibit. Only exhibits that are allowed or requested will be reviewed. The Evaluation Committee will not consider any information that exceeds the specified page limits.

C. Proposal Scoring

Failure of the Offeror to comply with the instructions of this RFP or failure to submit a complete proposal shall be grounds for the Evaluation Committee to deem the proposal

nonresponsive and disqualifying it. The Offeror will receive a letter of explanation for the disqualification.

D. Mandatory Requirements Evaluation

Each proposal shall be evaluated to determine whether the requirements as specified in section III B of this RFP have been met. The Mandatory Requirements will be evaluated against the following criteria:

1. The Acknowledgment of Receipt Form was submitted to HSD prior to the deadline.
2. Proposal was submitted prior to the closing date and time for proposals (refer to Section 2.1 Procurement Schedule of this RFP).
3. The Technical Proposal Binder and the Cost Proposal Binder are in separate envelopes/packaging (refer to Section III of this RFP).
4. The specified number of copies of proposals and binders are in sealed envelopes/packaging (refer to Section III of this RFP).
5. The proposal contains the necessary information in the proper order.
6. The Offeror has provided all forms and met all requirements in Section 5 of this RFP.
7. References have been submitted according to instructions. References must be received by the Procurement Manager by the date stated in Section 2.1 of the Procurement Schedule.

E. Technical Proposal Scoring

All responses in the Technical Proposal(s) will be evaluated and scored to determine which Offeror is best prepared to provide the services outlined in Section IV, Scope of Work, and in the Sample Contract (Appendix J). Scoring will be done through a consensus approach.

F. References Scoring

References will be evaluated and scored by the Evaluation Committee.

G. Cost Proposal Scoring

Cost Proposals will be evaluated and scored to determine which Offeror will provide the best value to the State for the required services.

H. Scoring Summary

Section	Points	Points
	<i>Component #1 (A) Actuarial Services</i>	<i>Component #2 (B) Medicaid Program & Policy Consulting Services</i>
Mandatory Requirements	Pass/Fail	Pass/Fail
Technical Proposal	440	360
References (2 per service component)	130	130
Cost Proposal	250	250
Total	820	740

When the evaluation and scoring of the Technical Proposals, References, and Cost Proposals are complete, HSD will tally the scores from the evaluations to determine the Offeror(s) that will receive Contract offer(s) from the State.

A Contract(s) will be awarded to the Offeror(s) based on the proposals that are deemed to be the most advantageous to the State. Although not mandatory, it is anticipated that the Contract will be awarded to the highest-scoring Offeror.

Upon selection of the Offerors that will receive a Contract, HSD shall initiate the contracting process. The selected Offeror(s) shall be notified in writing that their proposal has been accepted, and that HSD intends to contract with the Offeror.

I. Mandatory Requirements

Submission of the Acknowledgement of Receipt Form (Appendix A) to HSD by December 29, 2017 is mandatory. Other Mandatory Requirements to be submitted in the Mandatory Requirements section of the Technical Proposal Binder include:

1. Letter of Transmittal

A signed Letter of Transmittal (see Appendix B of this RFP).

2. Compliance and Acceptance Statement

The Letter of Transmittal form (noted above) includes a statement that explicitly indicates acceptance of the Conditions Governing the Procurement stated in Section II of this RFP and the Offeror's agreement to comply with all requirements as described in this RFP,

including all appendices, attachments, written clarifications, and amendments provided during the procurement process. If the Offeror is unwilling to comply with any terms, conditions, or other requirements of this RFP, the Offeror shall clearly describe any deviations from the terms, conditions, or requirements, and shall include a complete explanation of alternative terms and the reasons such deviations are proposed.

3. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

The Offeror must complete the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters form to certify compliance with federal regulations relating to suspension and debarment (see Appendix C of this RFP).

4. Campaign Contribution Disclosure

The Offeror must complete the Campaign Contribution Disclosure Form (see Appendix D of this RFP).

5. New Mexico Employees Health Coverage

The Offeror must agree with the terms of the New Mexico Employees Health Coverage Form and submit a signed copy with their proposal (see Appendix E of this RFP).

6. Conflict of Interest Affidavit

The Offeror must include signed and notarized Conflict of Interest Affidavits for all key personnel who are former employees of the State of NM (see Appendix F of this RFP).

7. Statement of Mergers, Acquisitions, or Sales

The Offeror must provide a statement of whether there have been any mergers, acquisitions, or sales of the Offeror's company within the last ten (10) years, and if so, provide relevant details. The Offeror shall include the Offeror's parent organization, affiliates, and subsidiaries.

8. List of References

The Offeror must submit a list of the References. The Offeror must provide two (2) specific client References for each service component for which they are submitting, with at least one (for each component) for a state Medicaid program or other large similar government or large private industry project within the last five (5) years. Each Reference noted on the list must include the contact name and phone number, a brief description of the services provided, and the period of service. *Offerors may NOT request References from the New Mexico Medicaid agency, nor list the NM Medicaid agency as a Reference.*

References for the Offeror shall be submitted to the Procurement Manager directly by the reference source using the Reference Form in RFP Appendix G. The submission deadline for References is on the date stated in Section II Procurement Schedule.

Offerors are responsible for:

- a. Making a duplicate (hard copy or electronic document) of the appropriate form, as it appears in RFP Appendix G, and adding the following customized information to the form:
 - (1.) Offeror's name;
 - (2.) Reference organization's name; and
 - (3.) Reference contact's name, title, telephone number, and email address.
- b. Sending the form to each Reference contact.
- c. Giving the contact a deadline that allows for HSD to receive the reference form prior to the deadline for receiving proposals (see Section II).

9. Proposed Subcontractors

Offerors must submit forms detailing each proposed Subcontractor providing services in the execution of the work outlined in the Scope of Work and Sample Contract (see Appendix J of this RFP).

10. Financial Reports

Offerors must submit copies of the most recent year's independently audited financial statements and the most current 10K, as well as financial statements for the preceding three (3) years, if they exist. The submission must include the audit opinion; the balance sheet; statements of income, retained earnings, and 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 Offeror's financial stability.

11. Performance Surety Bond Statement

Offeror must have the ability to secure a Performance Surety Bond in favor of the Agency to insure the Contractor's performance the contract award pursuant to this procurement. While each engagement will be different, the option to require a Performance Surety Bond must be available to the Agency at time of contract award. **A statement of concurrence must be submitted in the Offeror's proposal.**

12. Proposal Summary

The proposal summary must be two (2) pages or less. It shall provide the Evaluation Committee with an overview of proposal and of the expertise of the Offeror. This material will not be used in the evaluation process but may be used in public notifications regarding the selection of successful Offerors. If an Offeror is submitting proposals for both components of the Scope of Work (Actuarial Services and Medicaid Program and Policy

Consulting Services), the Offeror should submit two proposal summaries, one for each component.

13. Lobbying Disclosure

If applicable, submit the Lobbying Disclosure Form, OMB Form LLL.

J. Technical Proposal

Offers must submit separate technical proposals for each component of the Scope of Work they intend to cover. Proposals for each component will be scored separately.

The Offeror shall complete all requirements in each component section. All responses in the Technical Proposal(s) that are placed in the Technical Proposal Binder as instructed will be counted toward the per-section maximum page limits noted below. Documents placed in the Exhibits Binder will not be counted towards the Technical Proposal section page limits. Offerors must not embed attachments or external links into Technical Proposal responses.

Section page limits will be strictly enforced. Proposal evaluators will terminate the review when the maximum section page limit has been reached, which can negatively affect the score assigned to the response. Offerors are encouraged to be clear and concise in their narrative responses in order to complete Section V technical proposal responses within or below the specified page limits.

Point values for evaluation and scoring are noted for each component.

If the Offeror intends to use a Subcontractor for services discussed in any section, the Offeror must provide the name of the Subcontractor(s) in the response as well as on the required Subcontractor form (Appendix H, placed in the Mandatory Requirements section) which includes details on all subcontractors and the work they provide.

1. Actuarial Services Component Section (440 points)

Page limit for narrative responses in this section: 33 pages

Supplemental materials (such as resumes and licenses) should be placed in the Exhibits section and will not be counted in the narrative page limit.

- a) Describe the Offeror's experience providing actuarial work and Medicaid rate setting services. Include the number of years, the specific nature of the work, and the state(s) in which the entity has operated.
- b) Describe in detail the Offeror's actuarial team, including:
 - (i) An organizational chart;

- (ii) Roles and lines of authority;
 - (iii) Resumes and other pertinent staffing information;
Resumes should be placed in the Exhibits section and will not be counted toward the section page limit.
 - (iv) Primary geographic location of key staff and offices where the work will be conducted; and
 - (v) Attest that no staff is involved in performing any actuarial work for the Centennial Care MCOs, or their subcontractors.
- c) Describe the Offeror's professional licenses and certifications required to deliver actuarial and rate setting services under the proposed Scope of Work. Also:
- (i) Provide evidence of current relevant licenses and certifications;
Copies of license and certificates should be placed in the Exhibits section and will not be counted toward the Exhibits section page limit.
 - (ii) If applicable, provide a plan with a timeline for obtaining new licenses and certifications that would be required if the proposed project is awarded a contract under this RFP.
- d) The Offeror will be required to perform at a minimum the following functions:
- Adjust capitation rates for acute care services to reflect differences in the financial risk assumed by competing managed care organizations using the Medicaid Rx model or an alternative risk adjustment system appropriate for the New Mexico Medicaid program;
 - Conduct analysis to determine the appropriate risk adjustment systems for prospective rate setting; and
 - Mid-contract risk-adjustment calibration may be required.
- As a result, describe the following:
- (i) The approach the Offeror will utilize to ensure rates paid to individual managed care organizations are adequate to cover the risk profile of their enrollees;
 - (ii) The risk adjustment systems that the Offeror has utilized or has access to; and
 - (iii) The criteria for determining when mid-contract rate adjustments are necessary.
- e) Over the course of a rate-contract period, there may be program changes, such as managed care organization entrance to or exit from the Medicaid market, and the addition of new populations or benefits. Covered Medicaid populations include recipients by categories of eligibility such as:
- Infants, children, and women;
 - Blind, aged and disabled populations;
 - Children eligible for benefits under the Children's Health Insurance Program;
 - and

- Other Adult Group under the Medicaid expansion.

Describe your experience in these areas.

- f) Lines of business include:
- Physical health (PH);
 - Behavioral health (BH); and
 - Long term services and supports (LTSS)

The Offeror must provide a detailed and specific description of its approach in developing actuarially sound capitation rates for covered populations and by lines of business. The description of the rate setting process should demonstrate the Offeror's understanding of the Medicaid and CHIP Managed Care Final Rule requirements for capitation rate setting. The description should be appropriate for a general audience.

- g) The Contractor shall prepare rate development packets that provide systematic and programmatic documentation regarding the development of capitation rates that allow HSD and the MCOs to understand the methodology utilized by the Contractor during rate development. Documentation must clearly and completely explain and depict how capitation rates were developed, starting with raw data. This includes assumptions, a discussion of trend factors, claims lag and other adjustments. At a minimum, the rate development packets must comply with the requirements of the appropriate Medicaid and CHIP Rate Development Guide and show, per-member per-month costs by service type for each rate cell by specified Medicaid eligibility categories, annual costs per unit of service by service type, annual utilization patterns per 1,000 members, adjustments by service type, inflation updates, and risk adjusters by MCO. For various categories of eligibility, this information must be cross tabulated by category of service, demographic class, geographic area, and MCO. It is imperative that MCOs and other parties are able to replicate the rates from information in the rate development packets. The Contractor will be required to meet with HSD and MCOs multiple times to explain how the rates were developed and be prepared to answer questions that MCOs pose regarding actuarial methods, assumptions, and computations.

Please describe your experience in this area and specifically describe how these data packets/books are developed and presented to current and prospective MCOs.

- h) Provide a narrative summary describing at least two (2) similar-sized projects (similar in size to NM Medicaid) demonstrating expertise in developing Medicaid managed care rates, including:

- (i) The demography of covered populations and lines of business under which they are served, e.g., physical health, behavioral health, and long term services and supports;
 - (ii) Risk corridors involving specific medical services and conditions;
 - (iii) Risk-adjusted factors to covered populations and lines of business;
 - (iv) Non-medical expense items, e.g., administrative cost factors and taxes;
 - (v) The development of certifications and documentation necessary for CMS approval; and
 - (vi) The time periods of the projects.
- i) The Offeror must describe its system capability to receive, load, and analyze all data provided by HSD and/or MCOs by the transmission mode prescribed by HSD, including the Offeror's experience in validating and stratifying large data sets, representing 600,000 to 700,000 covered individuals and over 4,000,000 monthly healthcare services for:
- (i) Rate setting and financial reconciliations;
 - (ii) Developing adjustments for selection and case mix;
 - (iii) Developing health coverage policies with certain carved out services;
 - (iv) Evaluating drug utilization and impacts of new pharmacy products;
 - (v) The examination of member eligibility and medical utilization rates specific to the long term services and supports populations for nursing facilities and for home and community based services;
 - (vi) Evaluating inflation factors;
 - (vii) Identification of Third Party Liabilities; and
 - (viii) Evaluating geographic variations.
- j) The Offeror shall describe how it will maintain an electronic document repository that is accessible by all authorized State staff. An electronic repository will hold the most current version of document(s) available. The Offeror shall ensure that any/all project documents related to the services listed in this RFP are made available on the electronic data repository. Some of the documents may include, but not be limited to the following:
- (i) Draft and final deliverables described in this RFP.
 - (ii) Resources used to create any deliverables listed in this RFP available on the electronic data repository or delivered to HSD.
 - (iii) Any records of meetings related to the services listed in this RFP.
 - (iv) Documentation for all presentations related to the services listed in this RFP
 - (v) Any/all project documents related to the services listed in this RFP.
- k) Describe the Offeror's experience in supporting the development of Section 1115 Demonstration Waiver Applications including but not limited to:
- (i) Development and monitoring of budget neutrality; and

- (ii) Approach for budget neutrality projections for 1115 waiver renewals and for mid-waiver amendments.

2. Medicaid Program & Policy Consulting Services Component Section (360 points)

Page limit for narrative responses in this section: 27 pages

Supplemental materials may be placed in the Exhibits section and will not be counted in the narrative page limit.

- a. Describe in detail the Offeror's Medicaid policy and programs team, including:
 - (1.) An organizational chart;
 - (2.) Roles and lines of authority;
 - (3.) Resumes and other pertinent staffing information; and
Resumes should be placed in the Exhibits section and will not be counted toward the section page limit.
 - (4.) Primary geographic location of key staff and offices where the work will be conducted.

- b. Describe the Offeror's experience in developing Section 1115 Demonstration Waiver Applications including but not limited to:
 - (1.) Considerations for data production;
 - (2.) Consultation with state staff on program implementation and policies;
 - (3.) Advising on federal policies and requirements;
 - (4.) Evaluation of enrollment, programmatic, and financial performance as they relate to the development or renewal of the 1115 Waiver; and

- c. Describe the Offeror's experience assisting states in the development and implementation of the readiness review process for managed care organizations selected to administer Medicaid programs, including:
 - (1.) The development of readiness review tools; and
 - (2.) Monitoring and evaluation of the readiness review process.

- d. Describe the Offeror's proposed consulting activities in support of the implementation of New Mexico's Centennial Care 2.0 program that is effective on 1/1/2019.

- e. Describe the Offeror's experience and processes for assisting states with:
 - (1.) Programmatic and financial Managed Care report development;
 - (2.) MCO oversight and monitoring activities;
 - (3.) Provider rate analysis
 - (4.) Interpreting and utilizing the National Committee for Quality Assurance (NCQA) Healthcare Effectiveness Data and Information Set (HEDIS) technical specifications for collecting and reporting health outcomes.

- f. Describe the Offeror's experience in developing, training and implementing Medicaid policies and compliance programs with states for the following:
 - (1.)The CMS Managed Care rules;
 - (2.)Home and Community Based Settings Rule;
 - (3.)The Mental Health Parity Rule and;
 - (4.)Other relevant federal rules

- g. Describe the Offeror's experience, including tools utilized, in assisting states with development and implementation of major Medicaid programs such as:
 - (1.)Care Coordination models;
 - (2.)Long Term Services and Supports models including self-direction;
 - (3.)Health Homes; and
 - (4.)Other relevant programs.

- h. Describe the Offeror's experience with development and implementation of stakeholder engagement plans and activities related to program implementation as described in 7. above.

- i. Describe the Offeror's experience utilizing data analytics tools to evaluate population health outcomes. Include examples of any dashboards created in this area by the Offeror.

K. Cost Proposal

HSD is seeking high-quality professional services for the work described in the Scope of Work at the best value to the State. Points will be awarded for value, thoroughness and appropriateness of the response.

Do not include Cost Proposal information in the Technical Proposal. The Cost Proposal is submitted as a separate sealed section of the Offeror's submission.

Two separate Cost Proposals may be submitted, one for each service component of the RFP. They will be scored separately.

1. Actuarial Services Component Cost Proposal (250 points)

For the Offeror's Cost Proposal for Actuarial Services, provide the following:

- A. Provide a table showing all hourly costs by staffing category for:
 - 1. Personnel/staffing costs for actuarial and rate setting work.
 - 2. Other costs, including travel and other direct and indirect costs (explain).

Personnel rates must be equal to or lower than your best rates to any other public sector client for comparable work. Rates provided in this Cost Proposal may be incorporated into the contract, as negotiated between HSD and the successful Offeror.

- B. Provide a clear and detailed budget for annual actuarial and rate setting work (all inclusive: rate development, rate setting, and rate certification, updating, and monitoring), showing total hours and costs for the life of the project (four years) by year, activity and staffing category. Include itemization of all other costs (travel, direct, indirect, etc.) applicable to the completion of the work.

This contract may be subject to an annual fixed-cost and life-of-project not-to-exceed caps. Budgets provided in this Cost Proposal may be incorporated into the contract, as negotiated between HSD and the successful Offeror.

Include NM GRT as applicable.

2. Medicaid Program & Policy Consulting Services Component Cost Proposal (250 points)

For the Offeror's Cost Proposal for Medicaid Program and Policy Consulting Services, provide the following:

- A. Provide a table showing all hourly costs by staffing category for:
 - 1. Personnel/staffing costs for consultation services on Medicaid programs, policy and projects.
 - 2. Other costs including travel and other incidental, direct and indirect costs (explain).

Personnel rates must be equal to or lower than your best rates to any other public sector client for comparable work. Rates provided in this Cost Proposal may be incorporated into the contract, as negotiated between HSD and the successful Offeror.

- B. Provide a clear and detailed annual budget for proposed consulting work for on-going Medicaid policy and program consulting.

Include NM GRT as applicable.

VI. APPENDICES

Appendix A	Acknowledgment of Receipt of RFP Form
Appendix B	Letter of Transmittal Form
Appendix C	Debarment and Suspension Requirements
Appendix D	Campaign Contribution Disclosure Form
Appendix E	New Mexico Employees Health Coverage Form
Appendix F	Affidavit - Conflict of Interest
Appendix G	Reference Form
Appendix H	Proposed Subcontractors Template
Appendix I	Template for Submission of Questions
Appendix J	Sample Contract

Appendix A

Acknowledgement of Receipt Form

RFP # 18-630-8000-0002

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 J.

Submission of this form by potential Offerors to HSD is a Mandatory Requirement. The Acknowledgement of Receipt Form should be signed and returned to the Procurement Manager no later than January 5, 2018, as noted in Section 2.1 (Procurement Schedule). Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies all Offeror written questions and the HSD 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.

Submit to:

Daniel Clavio

New Mexico Human Services Department

Ark Plaza

PO Box 2348

Santa Fe, NM 87504-2348

Phone: (505) 827-1345

Email: Daniel.Clavio@state.nm.us

Fax: (505) 827-3185

Appendix B

Letter of Transmittal Form

RFP # 18-630-8000-0002

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:

____ (list) _____

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

(Attach extra sheets, as needed, and submit with this Letter of Transmittal form, Appendix B.)

7. ___ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section 2.3.1.
- ___ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section 4 of this RFP.
- ___ I acknowledge receipt of any and all amendments to this RFP.

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

Appendix C

Debarment & Suspension Requirement

RFP # 18-630-8000-0002

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

The entering of a Contract between HSD and the successful Offeror pursuant to this RFP is a “covered transaction,” consistent with all applicable federal and/or state laws and regulations, as applicable. HSD’s Contract with the successful Offeror shall contain a provision relating to debarment, suspension, and responsibility substantially in the form contained in Section 7.29. All Offerors shall provide as a part of their proposals a certification to HSD in the form provided below. Failure of an Offeror to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render that Offeror non-responsible. Additionally, the Offeror shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to Contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

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

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

(1) By signing and submitting a proposal in response to this RFP, the Offeror certifies, to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals-

- (A) Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of Contracts by any Federal department or Agency;
- (B) Have have not , within a three-year period preceding the date of the Offeror’s proposal, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to

obtain, or performing a public (federal, State, or local) Contract or subcontract; violation of federal or State antitrust statutes relating to the submission of Offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false Statements, tax evasion, or receiving stolen property;

- (C) Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with, commission of any of the offenses enumerated in paragraph (a) (1) (i) (B) of this certification;
- (D) Have have not , within a three-year period preceding the date of Offeror's proposal, had one or more public agreements or transactions (federal, State or local) terminated for cause or default; and
- (E) Have 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.

(ii) "Principal," for the purposes of this certification, shall have the meaning set forth in federal regulations and shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with Federal funds, who: is in a position to handle Federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(iii) For the purposes of this certification, the terms used in the certification, such as *covered transaction, debarred, excluded, exclusion, ineligible, ineligibility, participant, and person* have the meanings set forth in the definitions and coverage rules of applicable federal regulations.

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

OFFEROR: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

Appendix D

Campaign Contribution Disclosure Form

RFP # 18-630-8000-0002

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.

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

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

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

(Attach extra pages if necessary)

 Signature

 Date

 Title (position)

--OR--

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

 Signature

 Date

 Title (Position)

 Contractor Name

Appendix E

New Mexico Employees Health Coverage Form

RFP # 18-630-8000-0002

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

Conflict of Interest Affidavit

RFP # 18-630-8000-0002

AFFIDAVIT for former State Employees

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, _____ (name), being first duly sworn upon my oath, depose and state the following:

1. I am a former employee of the _____ (name of Department/ Agency), having separated/retired from state employment as of _____ (date).
2. The Human Services Department (HSD) and I have entered into a professional services agreement in the amount of \$_____.
3. Section 10-16-8.A(1) NMSA 1978 of the Governmental Conduct Act does not apply to this Professional Services Agreement because I neither sought a contract with the HSD, nor engaged in any official act which directly resulted in the formation of the Professional Services Agreement while an employee of the _____.
4. To the best of my knowledge, this Professional Services Agreement was awarded in compliance with the provisions of the New Mexico Procurement Code (13-1-28, et. seq., NMSA 1978).

FURTHER, AFFIANT SAYETH NOT.

Name

Subscribed and sworn to before me by _____ (name of former employee)
this ____ day of _____, 20__.

NOTARY PUBLIC

My Commission Expires:

Appendix G

Reference Form RFP # 18-630-8000-0002

For:

(Name of Offeror/Contractor)

Offerors may NOT request references from the New Mexico Medicaid agency.

This form is being submitted to your company for completion as a business reference for the company listed above, in response to a Request for Proposals to provide Actuarial Services and/or Medicaid Program and Policy Consulting services for the State of New Mexico. This form is to be returned to the State of New Mexico Human Services Department via e-mail at:

Daniel Clavio
New Mexico Human Services Department
Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504

Phone: (505)-827-1345
E-mail: Daniel.Clavio@state.nm.us
Fax: (505) 827-3185

The submission deadline for References to HSD is 5:00 PM (MST) on January 25, 2018. References **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, 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: *Please comment on each question.*

1. In what capacity have you worked with this Contractor in the past?
(Describe relationship and nature of contract and work)

2. How would you rate this firm in the following area?

Use the following 0 to 5 scale:

0 = Unacceptable, 1 = Unsatisfactory, 2 = Somewhat Satisfactory,

3 = Satisfactory/Good, 4 = Very Good, 5 = Excellent

a. Expertise _____

b. Operational Capacity _____

Comments:

3. How would you rate the following attributes of the Contractor?

Use the following 0 to 5 scale:

0 = Unacceptable, 1 = Unsatisfactory, 2 = Somewhat Satisfactory,

3 = Satisfactory/Good, 4 = Very Good, 5 = Excellent

a. Responsiveness to Contracting entity _____

b. Flexibility to changes in the project scope and timelines. _____

Comments:

4. What is your overall level of satisfaction with the following areas?

Use the following 0 to 5 scale:

0 = Unacceptable, 1 = Unsatisfactory, 2 = Somewhat Satisfactory,

3 = Satisfactory/Good, 4 = Very Good, 5 = Excellent

a. Emphasizing quality and positive outcomes over quantity _____

b. Meeting the needs of the Contracting entity and terms of the contract _____

Comments:

5. How would you rate the dynamics/interaction between:
Use the following 0 to 5 scale:
0 = Unacceptable, 1 = Unsatisfactory, 2 = Somewhat Satisfactory,
3 = Satisfactory/Good, 4 = Very Good, 5 = Excellent

a. The Contractor and your staff _____

Comments:

6. What are the Contractor's strengths, and with which aspect(s) of this Contractor's services are you most satisfied?
7. What are the Contractor's weaknesses, and with which aspect(s) of this Contractor's services are you least satisfied?
8. Would you recommend this Contractor's services to your organization again?
Describe any reservations or suggestions you may have in working with this Contractor.
9. Who were the Contractor's principal representatives involved in your project?
List at least 3.

Name: _____

Position / Role: _____

Comments:

Name: _____

Position / Role: _____

Comments:

Name: _____

Position / Role: _____

Comments:

Appendix H

Proposed Subcontractors Template

RFP # 18-630-8000-0002

Name of Offeror: _____ Date: _____

Provide the following information for each proposed Subcontractor providing services in the execution of the work outlined in the Scope of Work and Sample Contract.

To be placed in the Exhibits Binder.

1. Name of proposed Subcontractor.
2. Describe delegated functions in detail.
3. Location(s) of Subcontractor; include legal address(es) and address(es) where the work will be performed.
4. Describe Subcontractor qualifications.
5. Identify ownership of subcontracting firm; list all owners with greater than 5% ownership stake.
6. Describe performance monitoring of Subcontractor by Offeror.
7. Describe information transfer (e.g., data, claims, encounter, etc.) from Subcontractor to Offeror.

Appendix I

Template for Submission of Questions RFP # 18-630-8000-0002

Questions must be submitted in this format as a Word document.

Name of Offeror: _____

Date: _____

Offeror Q #	Source: RFP, Contract, or Data Book	Section # (& question # if applicable)	Page #	Text from RFP, Contract, or Data Book related to question	Offeror Question

Add on as needed

Appendix J

RFP # 18-630-8000-0002

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 (either Component 1 or Component 2 or both, as applicable), 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 misdemeanor and fined not more than \$5,000. Furthermore, the Contractor will inform its officers and employees of the penalties imposed by the HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), and HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), which provide that any officer or employee of a contractor, who willfully discloses Protected Health Information in any manner to any person not entitled to receive it, may be subject to civil and criminal penalties of up to \$50,000 and up to one year imprisonment.

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

33. Inspection.

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

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

A. The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor's performance of the Scope of Work of this

Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.

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

C. If the Contractor's performance of its obligations under the terms of this agreement qualifies it as a Business Associate of the HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to execute the HSD Business Associate Agreement (BAA), attached hereto as Exhibit B, and incorporated herein by this reference, and comply with the terms of the BAA and subsequent updates.

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

for one or both components outlined in Section IV of the RFP

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

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

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

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

1. Definition of Terms

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

- Subparts A and E.
- 2) Breach Notification Rule. “Breach Notification” shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
 - 3) Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
 - 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.