

HEALTH CARE AUTHORITY

REQUEST FOR PROPOSALS (RFP)

Certified Federal Health and Life Safety Code Surveys



RFP# 27-630-0800-0013

RFP Release Date: October 1, 2026

Proposal Due Date: November 12, 2026

ELECTRONIC-ONLY PROPOSAL SUBMISSION

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of the Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiations for the procurement of federal oversight of certified healthcare facilities through completion of recertification surveys and complaint investigations.

B. BACKGROUND INFORMATION

To ensure health care providers and facilities nationwide meet basic quality standards, the Centers for Medicare & Medicaid Services (CMS) relies on survey and certification efforts to provide onsite, objective and outcome-based verification conducted by knowledgeable and trained individuals. Section 1864 of the Social Security Act (the Act) establishes the framework within which SAs (State Agency), under agreements between the State and the Secretary, carry out the Medicare certification process. 42 CFR 488 requires the SA to perform surveys to support its certifications. 42 CFR Part 431, Subpart M, sets forth the functions the SA performs for the SMA (State Medicaid Agency). These surveys are conducted to ascertain whether a provider/supplier meets applicable requirements for participation in the Medicare and/or Medicaid programs, and to evaluate performance and effectiveness in rendering a safe and acceptable quality of care.

Surveys must be conducted by individuals who meet minimum qualifications prescribed by CMS. Surveyor training includes prerequisite training, basic training, and post basic training in the forms of advanced courses, refreshers, onsite survey experience and evaluation and competency tests. All surveyors must follow the principles set forth in [§ 488.24](#) through [§ 488.28](#) according to CMS policies and procedures for determining compliance with the conditions of participation.

The CMS Mission and Priority Document (MPD) directs and prioritizes the work of the SA and covers survey and certification functions, as well as the Medicare funding allocation process to perform these activities. Failure to complete the required workload will impact federal funding granted to provide oversight of these healthcare facilities.

The SA ability to complete survey workload and provide required regulatory oversight to ensure the health and safety of healthcare recipients require availability of competent staff. In addition, CMS requires Registered Nurses to conduct ACC (Acute and Continuing Care) facility surveys. Recruiting and retaining Registered Nurse Surveyors has been an ongoing challenge due to the volume of workload, extensive travel requirements throughout the state, and salary restrictions especially considering the generous sign-on bonuses offered for RNs in the private sector. Training a new employee to competency takes between 6-12 months.

C. SCOPE OF PROCUREMENT

The scope of the procurement is to contract with vendors to provide federal oversight of certified healthcare facilities through completion of recertification surveys and complaint investigations for a term of four years. The vendor will perform the survey/investigation and provide a written report of their survey findings and complaint investigation report as required in accordance with the CMS State Operations Manual.

This RFP may result in multiple awards.

This procurement will result in a contractual agreement between two parties; the procurement may ONLY be used by those two parties exclusively.

D. PROCUREMENT MANAGER

The Healthcare Authority Division of Health Improvement has assigned a Procurement Manager who is responsible for the conduct of this procurement whose name, address, telephone number and e-mail address are listed below:

Name: Micah Clokey, Procurement Manager
2040 S Pacheco St, Santa Fe, NM 87505
Telephone: (505) 469-3925
Email: Micah.Clokey@hca.nm.gov

1. **Any inquiries or requests** regarding this procurement should be submitted, in writing, to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the HSD/HCA.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.13.** As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, **ONLY** protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. Protests submitted or delivered to the Procurement Manager will **NOT** be considered properly submitted.

E. PROPOSAL SUBMISSION

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

F. DEFINITION OF TERMINOLOGY

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

1. **“Acute Continuing Care (ACC)”** is a healthcare facility that provides short-term, intensive medical treatment for urgent, severe, or life-threatening conditions. It is designed to stabilize a patient, manage critical symptoms, and address sudden or unexpected health issues.
2. **“Agency”** means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
3. **“Award”** means the final execution of the contract document.
4. **“Business Hours”** means weekdays (Monday – Friday) 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
5. **“Centers for Medicaid and Medicare Services (CMS)”** means the federal agency of the US Department of Health and Human Services that administers Medicare, Medicaid and other health programs.
6. **“Close of Business”** means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
7. **“Complaint”** means an allegation or report of noncompliance with applicable federal requirements involving a certified healthcare facility, received from an individual or entity, that may require review, investigation, and/or an onsite survey to determine whether the facility is in compliance with applicable requirements. Complaints may relate to, but are not limited to, concerns regarding quality of care, quality of life, resident or patient rights, abuse, neglect, exploitation, safety, staffing, services, or other conditions or practices that may constitute noncompliance.
8. **“Confidential”** means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-3-A-1 through 57-3A-7 NMSA 1978,. See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror’s submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.
9. **“Contract”** means any agreement for the procurement of items of tangible personal property, services or construction.
10. **“Contractor”** means any business having a contract with a state agency or local public body.

11. **“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.
12. **“Desirable”** – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
13. **“Electronic Submission”** means a successful submittal of Offeror’s proposal in the eProNM system.
14. **“Electronic Version/Copy”** means a digital format consisting of text, images or both, readable on computers or other electronic devices, which includes all content that the Original document contains. The electronic version/copy CANNOT be emailed.
15. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
16. **“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the Evaluation Committee to support the Committee’s recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
17. **“Final Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
18. **“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, as explained in Section II.B.8.
19. **“Home Health Agency (HHA)”** is a public agency or private organization, or a subdivision of such an agency or organization, that is primarily engaged in providing skilled nursing services and other therapeutic services to individuals in their place of residence and that meets applicable federal requirements for participation in the Medicare and/or Medicaid programs.
20. **“Hourly Rate”** means the proposed fully loaded maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
21. **“Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)”** is a facility that provides health and rehabilitative services to individuals with intellectual disabilities or related conditions and is certified to participate in the Medicaid program. An ICF/IID provides active treatment designed to assist individuals in achieving and maintaining their highest practicable level of independence, functioning, and well-being.

22. **“IT”** means Information Technology.
23. **“Internet Quality Improvement and Evaluation System (IQIES)”** refers to a CMS internet-based system that includes survey and certification functions.
24. **“Life Safety Code”** is the National Fire Protection Association’s NFPA 101 *Life Safety Code*, adopted by reference in Medicare and Medicaid rules to set fire and emergency safety standards for certified health care facilities
25. **“Mandatory”** – the terms “must,” “shall” “will,” “is required,” or “are required,” identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror’s proposal.
26. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
27. **“Multiple Source Award”** means an award of a contract for one or more items of tangible personal property, services or construction to more than one Offeror.
28. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
29. **“Price Agreement”** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
30. **“Procurement Manager”** means any person or designee authorized by a state agency or local public body with the responsibility, authority, and resources to conduct the RFP procurement, make written determinations regarding the RFP procurement, and/or enter into or administer contracts as a result of the RFP procurement.
31. **“Procuring Agency”** means all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to procure items of tangible personal property, services or construction from the agreement(s) awarded as a result of this RFP.
32. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project acceptance is given by the project executive sponsor.
33. **“Recertification”** is the periodic process used to determine whether a federally certified healthcare facility or provider continues to meet the applicable federal requirements for participation in the Medicare and/or Medicaid programs. Recertification generally includes a survey conducted in accordance with applicable federal regulations, requirements, and survey protocols to assess the facilities or provider’s continued compliance with applicable

Conditions of Participation, Conditions for Coverage, or other federal certification requirements.

34. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7 NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in Section II.C.8 of this RFP) blacked-out BUT NOT omitted or removed.
35. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
36. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
37. **“Responsive Offer”** or means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
38. **“Sealed”** means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents has been completely and successfully uploaded into HSD’S/HCA’s electronic procurement portal bonfire system prior to the submission deadline stated in the RFP.
39. **“Single Source Award”** means an award of contract for items of tangible personal property, services or construction to only one Offeror.
40. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.
41. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
42. **“State (the State)”** means the State of New Mexico.
43. **“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.
44. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.

45. **“Statement of Concurrence”** means an affirmative statement from the Offeror indicating its response to a required Section IV specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in Offerors proposal, pursuant to Section III.C.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.)
46. **“State Operations Manual (SOM)”** is a federal guidance document issued by the Centers for Medicare & Medicaid Services (CMS) that provides survey and certification rules, instructions, and protocols for state agencies and healthcare providers to ensure compliance with Medicare and Medicaid regulations.
47. **“Survey”** is a formal inspection conducted under the State Operations Manual (SOM) to assess compliance of a Medicare/Medicaid-certified health care facilities with federal requirements, and to determine certification status.
48. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.
49. **“Written”** means typed in standard 8 ½ x 11 inch document format, by common electronic means (such as Microsoft Word, Adobe PDF, etc.). A larger size document is permissible for charts, spreadsheets, etc.

G. PROCUREMENT LIBRARY

A procurement library has been established. Offerors are encouraged to review the material contained in the Procurement Library by selecting the link provided in this document through your own internet connection. The library contains information listed below:

RFP, Questions & Answers, RFP Amendments, etc.
Other relevant links:

[New Mexico Health Care Authority \(Euna portal\)](#)

[Open RFPs | New Mexico Health Care Authority](#)

[CCSQ Mission & Priorities Document](#)

[Medicare State Operations Manual](#)

[eCFR :: 42 CFR Part 488 -- Survey, Certification, and Enforcement Procedures](#)

[eCFR :: 42 CFR Part 431 Subpart M -- Relations With Other Agencies](#)

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

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

Action	Responsible Party	Due Dates
1. Issue RFP	HCA	10/01/2026
2. Acknowledgement of Receipt Form	Potential Offerors	10/16/2026
3. Pre-Proposal Conference	Agency	10/16/2026
4. Deadline to submit Written Questions	Potential Offerors	10/20/2026
5. Response to Written Questions	Procurement Manager	10/22/2026
6. <i>Submission of Proposal</i>	<i>Potential Offerors</i>	<i>11/12/2026</i>
7.* Proposal Evaluation	Evaluation Committee	11/13/2026 to 11/30/2026
8.* Selection of Finalists	Evaluation Committee	11/24/2026
9.* Best and Final Offers	Finalist Offerors	11/30/2026
10.* Finalize Contractual Agreements	Agency/Finalist Offerors	12/01/2026 to 12/07/2026
11.* Contract Awards	Agency/ Finalist Offerors	12/08/2026
12.* Protest Deadline	HCA	12/30/2026

* Dates indicated in Events 7 through 13 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

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

1. Issue RFP

This RFP is being issued on behalf of the State of New Mexico State of New Mexico Health Care Authority on **10/01/26** the date indicated in Section II.A, Sequence of Events.

2. Acknowledgement of Receipt Form

Potential Offerors may e-mail the Acknowledgement of Receipt Form (APPENDIX A), to the HSD/HCA buyer, Micah Clokey, Procurement Manager, Micah.Clokey@hca.nm.gov to have their organization placed on the procurement Distribution List. The form must be

returned to the procurement manager by 3:00 pm MST/ MDT on the date indicated in Section II.A, Sequence of Events

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

3. Pre-Proposal Conference

A pre-proposal conference will be held as indicated in Section II.A, Sequence of Events, beginning at 9:00 am on 10/16/2026 MST/MDT via

Microsoft Teams meeting

Join:

<https://teams.microsoft.com/meet/234094860484108?p=QjQN5QEGb8kH3X7F5Q>

Meeting ID: 234 094 860 484 108

Passcode: 9dN7ry2A

Potential Offeror(s) are encouraged to submit written questions in advance of the conference to the Procurement Manager (see Section I.D). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the conference. All questions answered during the Pre-Proposal Conference will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in Section II.A, Sequence of Events. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

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

4. Deadline to Submit Written Questions

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 10/20/2026 at 5:00 pm MST/MDT as indicated in Section II.A, Sequence of Events. All written questions must be addressed to the Procurement Manager as declared in Section I.D. Questions shall be clearly labeled and shall cite the Section(s) in the RFP or other document which form the basis of the question.

5. Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in Section II.A, Sequence of Events, to all potential Offerors who timely submitted an Acknowledgement of Receipt Form (Section II.B.2 and APPENDIX A).

The Questions and Answers will be posted to:

[New Mexico Health Care Authority \(Euna portal\)](#)

[Open RFPs | New Mexico Health Care Authority](#)

6. Submission of Proposal

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

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON THE DATE INDICATED IN SECTION II.A, SEQUENCE OF EVENTS. **NO LATE PROPOSAL CAN BE ACCEPTED.** The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks “OK” after “Review and Submit.” Such electronic submissions will be considered sealed in accordance with statute.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the HSD's/HCA's bonfire system by the deadline set forth in this RFP. The HSD's/HCA's bonfire system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, **allow adequate time for large uploads and to fully complete your submittal by the deadline.** A submission that is not both: (1) fully complete; and (2) received, via the bonfire system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the bonfire system by the deadline because the response was captured, blocked, filtered, quarantined or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE PROPOSAL CAN BE ACCEPTED.***

Proposals must be submitted electronically through HSD's/HCA's bonfire electronic procurement system. Refer to Section III.B.1 for instructions. Proposals submitted by facsimile, or other electronic means other than through the HSD's/HCA's electronic e-procurement system, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116 NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is

deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

7. Proposal Evaluation

An Evaluation Committee will perform the evaluation of proposals. This process will take place as indicated in Section II.A, Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors.

8. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offerors as per schedule Section II.A, Sequence of Events or as soon as possible thereafter. A schedule for Oral Presentation, if any, will be determined at this time.

9. Best and Final Offers

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

10. Finalize Contractual Agreements

After approval of the Evaluation Committee Report, any contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s), taking into consideration the evaluation factors set forth in this RFP, as per Section II.A., Sequence of Events, or as soon as possible thereafter. The most advantageous proposal may or may not have received the most points. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the timeframe specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

11. Contract Awards

Upon receipt of the signed contractual agreement, the Agency Procurement office will award as per Section II.A., Sequence of Events, or as soon as possible thereafter. The award is subject to appropriate Department and State approval.

12. Protest Deadline

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172 NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this Request for Proposals, pursuant to §13-1-172 NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15 calendar day protest period shall begin on the

day following the notice of award of contract(s) and will end at 5:00 pm MST/MDT on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. It must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. The protest must be directed to:

Office of General Counsel
1474 Rodeo Rd.
Santa Fe, New Mexico 87505

PROTESTS RECEIVED AFTER THE DEADLINE WILL NOT BE ACCEPTED.

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance to be bound by the Conditions Governing the Procurement, Section II.C, and Evaluation, Section V, by completing and signing the Letter of Transmittal form, pursuant to the requirements in Section II.C.30, located in APPENDIX E.

2. Incurring Cost

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

3. Prime Contractor Responsibility

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

4. Subcontractors/Consent

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

5. Amended Proposals

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

6. Offeror's Rights to Withdraw Proposal

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

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations, 1.4.1.5 & 1.4.1.36 NMAC.

7. Proposal Offer Firm

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

8. Disclosure of Proposal Contents

The contents of all submitted proposals will be kept confidential until the final award has been completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- a. ***Proprietary and Confidential information is restricted to:***
 1. confidential financial information concerning the Offeror's organization; and
 2. information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7 NMSA 1978.
- b. An additional but separate redacted version of Offeror's proposal, as outlined and identified in Section III.B.2.a, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal.

IMPORTANT: The price of products offered or the cost of services proposed **SHALL NOT** be designated as proprietary or confidential information.

If a request is received for disclosure of proprietary or confidential materials, the Agency shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of proprietary or confidential information.

9. No Obligation

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

10. Termination

This RFP may be canceled at any time 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 affected by sending written notice to the contractor. The Agency's decision as to whether sufficient appropriations and authorizations are available will be accepted by the contractor as final.

12. Legal Review

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

13. Governing Law

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

14. Basis for Proposal

Only information supplied in writing by the Procurement Manager or contained in this RFP shall be used as the basis for the preparation of Offeror proposals.

15. Contract Terms and Conditions

The contract between an agency and a contractor will follow the format specified by the Agency and contain the terms and conditions set forth in the Draft Contract Appendix C. However, the contracting agency reserves the right to negotiate provisions in addition to those contained in this RFP (Draft Contract) with any Offeror. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of any resultant contract.

The Agency discourages exceptions from the contract terms and conditions as set forth in the RFP Draft Contract. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Agency (and the Evaluation Committee), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP Draft Contract (APPENDIX C) strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose **specific** alternative language. The Agency may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Draft Contract are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an **explicit agreement** by the Offeror that the contractual terms and conditions contained herein are **accepted** by the Offeror.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Section II.C.15 for requirements.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Agency and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in §13-1-83 and §13-1-85 NMSA 1978.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor irregularities, as defined in Section I.F.19. The Evaluation Committee also reserves the right to waive mandatory requirements, provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

20. Change in Contractor Representatives

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

21. Notice of Penalties

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

22. Agency Rights

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

23. Right to Publish

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

24. Ownership of Proposals

All documents submitted in response to the RFP shall become property of the State of New Mexico. If the RFP is cancelled, all responses received shall be destroyed by the Agency or HSD/HCA.

25. Confidentiality

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

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

26. Electronic mail address required

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

27. Use of Electronic Versions of this RFP

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

[New Mexico Health Care Authority \(Euna portal\)](#)

[Open RFPs | New Mexico Health Care Authority](#)

28. New Mexico Employees Health Coverage

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

29. Campaign Contribution Disclosure Form

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

30. Letter of Transmittal

Offeror's proposal must be accompanied by a Letter of Transmittal Form (APPENDIX E), which must be **signed** by the individual authorized to contractually obligate the company, identified in #2 below.

Provide the following information:

1. Identify the submitting business entity; Name, Mailing Address, Phone Number, Federal Tax ID Number (TIN), and New Mexico Business Tax ID Number (BTIN, formerly CRS);
2. Identify the Name, Title, Telephone, and E-mail address of the person authorized by the Offeror's organization to (A) contractually obligate the business entity providing the Offer, (B) negotiate a contract on behalf of the organization; and/or (C) provide clarifications or answer questions regarding the Offeror's proposal content (*A response to B and/or C is only necessary if the responses differs from the individual identified in A*);
3. Identify any subcontractor/s that may be utilized in the performance of any resultant contract award;
4. Identify any other entity/-ies (such as State Agency, reseller, etc., that is not a subcontractor identified in #3) that may be used in the performance of this awarded contract; and
5. The individual identified in #2 above, must sign and date the form, attesting to the veracity of the information provided, and acknowledging (a) the organization's acceptance of the Conditions Governing the Procurement stated in Section II.C.1, (b) the organizations acceptance of the Section V Evaluation Factors, and (c) receipt of any and all amendments to the RFP.

Failure to submit a signed Letter of Transmittal Form (Appendix E) will result in Offeror's disqualification.

31. Disclosure Regarding Responsibility

- A. Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:
 1. is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;

2. has within a three-year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
 - a. the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or subcontract;
 - b. violation of Federal or state antitrust statutes related to the submission of offers; or
 - c. the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
 3. is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
 4. has, preceding this offer, been notified of any delinquent Federal or state taxes in an amount that exceeds \$3,000.00 of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply.
 - a. The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - b. The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
 - c. Have within a three-year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- B. Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity or related entities.
- C. The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- D. A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will render the Offeror nonresponsive.
- E. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed

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

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

32. New Mexico/Native American Resident Preferences

The New Mexico/Native American Resident Preferences shall not apply because the expenditures for this RFP includes federal funds.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal in response to this RFP ELECTRONIC SUBMISSION

1. **ONLY ELECTRONIC SUBMISSION VIA (Human Services Procurement Portal, Bonfire Interactive, can be accessed at [New Mexico Human Services Department \(bonfirehub.com\)](http://New Mexico Human Services Department (bonfirehub.com)))**
2. **All vendors must register with the Procurement Portal to log in and submit requested information.**

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

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

1. **Technical Proposals** – One (1) ELECTRONIC upload must be organized in accordance with **Section III.C.1. Proposal Format**. All information for the Technical Proposal **must be combined into a single file/document for uploading**. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit. The Technical Proposals **SHALL NOT** contain any cost information.*
 - a. **Confidential Information:** If Offeror's proposal contains confidential information, as defined in Section I.F.6 and detailed in Section II.C.8, Offeror **must** submit **two (2) separate ELECTRONIC technical files:**
 - i. One (1) ELECTRONIC version of the requisite proposals identified in Section III.B.1.a above as **unredacted** (def. Section I.F.38) versions for evaluation purposes; and
 - ii. One (1) **redacted** (def. Section I.F.27) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal. Redacted versions **must** be clearly marked as "REDACTED" or "CONFIDENTIAL" on the first page of the electronic file;
2. **Cost Proposals** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a**

single file/document for uploading.

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

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

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

B. PROPOSAL CONTENT AND ORGANIZATION

All proposals must be submitted as follows:

Organization of files/envelopes for electronic copy proposals:

1. Proposal Content and Organization

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

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

1. Signed Letter of Transmittal
2. Signed Campaign Contribution Form
3. Table of Contents
4. Proposal Summary (Optional)
5. Response to Contract Terms and Conditions (from Section II.C.15)
6. Offeror's Additional Terms and Conditions (from Section II.C.16)
7. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
 - a. Organizational Experience
 - b. Organizational References
 - c. Mandatory Specification
 - d. Desirable Specification
8. Other Supporting Material (if applicable)

Cost Proposal:

1. Completed Cost Response Form (APPENDIX D)

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

A Proposal Summary may be included in Offeror's Technical Proposal, to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

2. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in Appendix E which must be completed and signed by an individual person authorized to obligate the company.

3. Campaign Contribution Disclosure Form

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

4. Table of Contents

The table of contents must contain a list of all sections of the proposal and the corresponding page numbers.

5. Proposal Summary

The proposal summary must be five (5) pages or less. It shall provide the Evaluation Committee with an overview of the technical and business features of the proposal. This material will not be used in the evaluation process but may be used in public notifications regarding the successful offeror's selection.

6. Response to Department's Terms and Conditions

The offeror shall explicitly indicate acceptance of the General Requirements (Section II.C) and the Contract Terms and Conditions (Appendix C). As provided in Section II.C.15, should the offeror object to any of the Agency's terms and conditions, as contained in Appendix C, the offeror must propose specific alternate language. The offeror must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

7. Offeror's Additional Terms and Conditions

Offerors must submit with the proposal a complete set in writing of any additional terms and conditions they request to have included in a contract negotiated with the Department.

8. Response to Mandatory Specifications

The Mandatory Specifications may be found in Section IV of the RFP. This section contains information required in the submission of proposals. Offerors must respond in the form of a thorough narrative to each numbered requirement in the order in which they appear in this section. The offeror must identify, in full, the question being answered and its response to that question.

9. Suspension and Debarment Requirement Form

The offeror must complete the certification form in Appendix G to certify compliance with federal regulations relating to suspension and debarment.

10. Lobbying

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or 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 in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

IV. SPECIFICATIONS

A. DETAILED SCOPE OF WORK

The Contractor shall perform the following work:

- a. The Contractor shall conduct recertification surveys and complaint investigations of federally certified healthcare facilities in accordance with applicable Centers for Medicare & Medicaid Services (CMS) requirements, including the CMS State Operations Manual (SOM) and applicable provisions of the Code of Federal Regulations (CFR).
- b. The Contractor shall prepare and electronically submit complete survey findings in Microsoft Word format for subsequent transposition into the CMS-2567 Statement of Deficiencies within IQIES. Findings shall be documented in accordance with the CMS Principles of Documentation and shall clearly identify and support any deficiencies cited with appropriate and sufficient source documentation and evidence.
- c. The Contractor shall prepare and submit a written Complaint Investigation Report for each complaint investigation conducted under the terms of this contract. The report shall demonstrate a thorough investigation of the allegations, clearly document the investigative activities conducted, identify and include supporting evidence, and provide a compliance determination for each allegation investigated. Findings and compliance determinations shall be supported by sufficient evidence and documented in accordance with applicable CMS requirements, guidance, and investigative protocols.
- d. The Contractor shall electronically submit all required supporting survey documentation and forms to the designated Deputy Director and Bureau Chief(s) within the Health Care Authority (HCA), Division of Health Improvement (DHI), Health Facility Licensing and Certification Bureau (HFLC), no later than five (5) business days following the exit date of each survey conducted under this contract.
- e. Upon receipt of the Contractor's completed survey findings and all required supporting documentation, the State Agency (SA) shall complete the remaining survey process, including preparation and processing of the CMS-2567 Statement of Deficiencies, as applicable.

- f. The Contractor shall remain available for consultation with the State Agency (SA), as needed, before, during, and following each survey or complaint investigation conducted under this contract.
- g. The Contractor shall comply with all applicable requirements of the Health Insurance Portability and Accountability Act (HIPAA), including requirements related to the privacy, security, and confidentiality of protected health information obtained or accessed in the performance of services under this contract.
- h. The Contractor shall maintain all professional licenses, accreditations, credentials, CMS surveyor certifications, continuing education requirements, and any other qualifications required by CMS or applicable licensing or regulatory authorities throughout the term of the contract. All personnel assigned to perform services under this contract shall maintain the qualifications required to perform the applicable scope of professional services on behalf of the State Agency (SA).

B. TECHNICAL SPECIFICATIONS

1. Organizational Experience

Offeror **must**:

- a) provide a detailed description of relevant corporate experience with state government and private sector. The experience of all proposed subcontractors must be described. The narrative **must** thoroughly describe how the Offeror has supplied expertise for similar contracts and must include the extent of their experience, expertise and knowledge as a provider of certified healthcare surveyors. All comparable healthcare facility survey, complaint investigation, Health survey, and Life Safety Code survey services to private-sector entities will also be considered
- b) provide a detailed resume of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel is identified as certified healthcare surveyors, vendor administrators, Quality Assurance personnel and any others identified as conducting the scope of work or providing oversight. Offeror must include key personnel education, work experience, relevant certifications and licenses.

2. Organizational References

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

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

- a) Client name;
- b) Project description;
- c) Project dates (starting and ending);
- d) Staff assigned to reference engagement that will be designated for work per this RFP; and
- e) Client project manager name, telephone number, fax number and e-mail address.

Offeror is required to submit APPENDIX F, Organizational Reference Questionnaire (“Questionnaire”), to the business references it lists. **The business references must submit the Questionnaire directly to the designee identified in APPENDIX F. The business references must not return the completed Questionnaire to the Offeror.** It is the Offeror’s responsibility to ensure the completed forms are submitted on or before the date indicated in Section II.A, Sequence of Events, for inclusion in the evaluation process.

Organizational References that are not received or are not complete, may adversely affect the Offeror’s score in the evaluation process. Offerors are encouraged to specifically request that their Organizational References provide detailed comments.

3. Mandatory Specification

Competency and Qualifications

The Offeror shall demonstrate that personnel proposed to perform services under the resulting contract possess the knowledge, qualifications, experience, and technical competency necessary to conduct Health and Life Safety Code (LSC) surveys of federally certified healthcare facilities, including recertification surveys and complaint investigations, as applicable.

The Offeror shall identify the personnel proposed to perform Health surveys and Life Safety Code surveys and describe their relevant education, training, professional licenses, credentials, CMS surveyor certifications, continuing education, and experience applicable to their assigned survey responsibilities.

Proposed personnel shall demonstrate knowledge and experience with applicable CMS requirements, the CMS State Operations Manual (SOM), applicable provisions of the Code of Federal Regulations (CFR), survey protocols, investigative procedures, CMS Principles

of Documentation, and other applicable federal requirements associated with Health and Life Safety Code survey activities.

The Offeror shall describe its process for verifying, assessing, and maintaining the competency, certifications, credentials, and other required qualifications of personnel throughout the term of the contract.

Capacity to Support the Work

The Offeror shall demonstrate sufficient organizational, staffing, and operational capacity to support the anticipated volume of work under the resulting contract, including recertification surveys, complaint investigations, of Health surveys, and Life Safety Code (LSC) surveys.

The Offeror shall describe the number and availability of qualified personnel available to perform Health and Life Safety Code survey activities, including the ability to provide appropriately qualified personnel for each survey discipline. The Offeror shall describe its ability to manage multiple assignments concurrently, accommodate fluctuations or increases in workload, and complete assigned work within required timeframes.

The Offeror shall also describe its approach to maintaining adequate staffing and resources throughout the term of the contract to ensure continuity of services and timely completion of assigned Health and Life Safety Code survey activities without compromising the quality or completeness of the work.

4. Desirable Specification

Continuing Education and Training

The Offeror shall describe its continuing education and training program for personnel proposed to perform services under this contract. The response shall identify how the Offeror ensures personnel maintain current knowledge and skills necessary to conduct recertification surveys and complaint investigations of federally certified healthcare facilities.

The Offeror shall describe the frequency and types of training provided, methods used to identify training needs, processes for documenting completion of required training, and how personnel are kept current with applicable federal regulations, guidance, survey protocols, investigative procedures, and other requirements relevant to the services performed under this contract.

C. BUSINESS SPECIFICATIONS

1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in APPENDIX E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to submit a signed form will result in Offeror's disqualification.**

2. Campaign Contribution Disclosure Form

The Offeror must complete an unaltered Campaign Contribution Disclosure Form and submit a signed copy with the Offeror's proposal. This must be accomplished whether or not an applicable contribution has been made. (See APPENDIX B). **Failure to complete and return the signed, unaltered form will result in Offeror's disqualification.**

3. Cost

Offerors must complete the Cost Response Form in Appendix D. Cost will be measured by the total cost per state fiscal year for implementation of their service. The cost should be inclusive of completing all of the specifications related to Certifies Federal Health and Safety Code Surveys. All charges listed on Appendix D must be justified and evidence of need documented in the proposal.

V. EVALUATION

A. EVALUATION POINT SUMMARY

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

Evaluation Factors <i>(Correspond to Sections IV.B and IV.C)</i>	Points Available
B. Technical Specifications (800 Total Points)	
B. 1. Organizational Experience	100
B. 2. Organizational References	100
B. 3. Mandatory Specification	400
B. 4. Desirable Specification	200
C. Business Specifications (200 Total Points)	
C.1. Letter Of Transmittal	Pass/Fail
C.2. Campaign Contribution Disclosure Form	Pass/Fail
C.3. Cost	200
TOTAL POINTS AVAILABLE	1,000

Table 1: Evaluation Point Summary

B. EVALUATION FACTORS

1. B.1 Organizational Experience (See Table 1)

Points will be awarded based on the thoroughness and clarity of Offeror's response in this Section. The Evaluation Committee will also weigh the relevancy and extent of Offeror's experience, expertise and knowledge; and of personnel education, experience and certifications/licenses. In addition, points will be awarded based on Offeror's candid and well-thought-out response to successes and failures, as well as the ability of the Offeror to learn from its failures and grow from its successes.

2. B.2 Organizational References (See Table 1)

Points will be awarded based upon an evaluation of the responses to a series of questions on the Organizational Reference Questionnaire (Appendix F). Offeror will be evaluated on references that show positive service history, successful execution of services and evidence of satisfaction by each reference. References indicating significantly similar services/scopes of work and comments provided by a submitted reference will add weight and value to a recommendation during the evaluation process. Points will be awarded for each individual response up to 1/10 of the total points for this category. Lack of a response will receive zero (0) points.

The Evaluation Committee may contact any or all business references for validation of information submitted. If this step is taken, the Procurement Manager and the Evaluation Committee must all be together on a conference call with the submitted reference so that the Procurement Manager and all members of the Evaluation Committee receive the same information. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the Organizational Reference information required herein), in its evaluation of Offeror responsibility per Section II.C.18.

3. B.3 Mandatory Specifications

Competency and Qualifications

Points will be awarded based on the demonstrated competency, qualifications, and relevant experience of the personnel proposed to perform Health and Life Safety Code survey activities under the resulting contract.

Evaluation will consider the education, training, professional licenses, credentials, CMS surveyor certifications, continuing education, and relevant experience of proposed personnel; demonstrated knowledge of applicable federal requirements and CMS survey protocols; experience conducting Health and Life Safety Code surveys, recertification surveys, and complaint investigations, as applicable; ability to accurately identify,

investigate, support, and document findings; and the Offeror's processes for verifying and maintaining personnel competency and required qualifications throughout the contract term.

Capacity to Support the Work

Points will be awarded based on the Offeror's demonstrated organizational, staffing, and operational capacity to support the anticipated volume of work under the resulting contract.

Evaluation will consider the availability and number of qualified personnel available to conduct Health and Life Safety Code surveys; the Offeror's ability to provide appropriate personnel for each survey discipline; ability to manage multiple assignments concurrently; ability to accommodate fluctuations or increases in workload; ability to meet required completion timeframes; and the adequacy of the Offeror's approach to maintaining sufficient staffing and resources throughout the contract term.

4. B.4 Desirable Specifications

Continuing Education and Professional Development

Points will be awarded based on the Offeror's demonstrated approach to maintaining the knowledge, skills, and competency of personnel assigned to the contract. Evaluation will consider the relevance and frequency of continuing education and training, processes for identifying and addressing training needs, methods for documenting training completion, and the Offeror's demonstrated ability to ensure personnel remain current with applicable federal requirements, guidance, survey protocols, and investigative procedures.

5. C.1 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

6. C.2 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

7. C.3 Cost (See Table 1)

The offeror will be evaluated based on the total cost of implementation of the program for the 4-year contract period. The evaluation of each Offeror's cost proposal will be conducted using the following formula

Lowest Responsive Offeror's Cost

Each Offeror's Cost

X Available Award Points

Cost has been assigned 20% of the total evaluation points due to the specialized and regulatory nature of the services being procured. The successful Offeror will be responsible for conducting recertification surveys and complaint investigations of federally certified healthcare facilities. These activities require qualified personnel with demonstrated competency, knowledge of applicable federal requirements, sufficient staffing capacity, and the ability to produce accurate and supportable survey and investigation findings. Greater weight has therefore been assigned to technical qualifications, experience, competency, and capacity to ensure the State Agency obtains services that support the quality, integrity, and timely completion of its federal oversight responsibilities.

C. EVALUATION PROCESS

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may use other sources of to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value in Section V. The responsible Offerors with the highest scores may be selected as finalist Offerors, based upon the proposals submitted. In accordance with §13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in Section V will be recommended for award (as specified in Section II.B.12). Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

REQUEST FOR PROPOSAL

Federal Certified Health and Life Safety Code Surveys
RFP# 27-630-0800-0013

ACKNOWLEDGEMENT OF RECEIPT FORM

This optional Acknowledgement of Receipt Form establishes a distribution list to be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the Acknowledgement of Receipt Form does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the Acknowledgement of Receipt Form, the potential Offeror's representative shall not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Library (Section I.G.) responses to written questions and any amendments to the RFP.

The information below will be used for all correspondence related to the Request for Proposal. Only one contact per Offeror is permitted.

ORGANIZATION: _____

CONTACT NAME: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Submit Acknowledgement of Receipt Form to:

To: Micah Clokey, Procurement Manager

E-mail: Micah.Clokey@hca.nm.gov

Subject Line: Federal Certified Health and Life Safety Code Surveys
RFP# 27-630-0800-0013

APPENDIX B

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq. NMSA 1978 and § 13-1-191.1 NMSA 1978 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give 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 during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or 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.

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

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

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the

authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

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

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

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

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or 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:
Governor, Michelle Lujan-Grisham
Lieutenant Governor, Howie Morales

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

APPENDIX C
DRAFT CONTRACT

STATE OF NEW MEXICO

(NAME OF AGENCY)
PROFESSIONAL SERVICES CONTRACT # 27-630-0800-0013

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **Health Care Authority**, hereinafter referred to as the “HCA,” and **NAME OF CONTRACTOR**, hereinafter referred to as the “Contractor,” and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall perform the following work:

2. Compensation.

A. HCA 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 New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by HCA to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, 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 HCA when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.**

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. All invoices MUST BE received by HCA 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. HCA 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 HCA 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 GSD/SPD. All invoices MUST BE received by HCA 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 HCA 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 HCA 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, HCA shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**

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

4. **Termination.**

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

B. **Notice; Agency Opportunity to Cure.**

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

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all HCA's material breaches of this Agreement upon which the termination is based and (ii) state what HCA must do to

cure such material breaches. Contractor's notice of termination shall only be effective (i) if HCA 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, HCA 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 HCA; (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, HCA'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 HCA'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either HCA 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 HCA; 2) comply with all directives issued by HCA in the notice of termination as to the performance of work under this Agreement; and 3) take such action as HCA shall direct for the protection, preservation, retention or transfer of all property titled to HCA 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 HCA upon termination and shall be submitted to HCA 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 HCA to the Contractor. HCA's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If HCA 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 HCA 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 HCA.

8. Subcontracting.

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

9. Release.

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

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 HCA 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 the Contractor and all of its employees, agents, or subcontractors presently have 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 Agency employee while such employee was or is employed by HCA and participating directly or indirectly in HCA'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 HCA'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 HCA.

C. The Contractor further represents and warrants that the Contractor and all of its employees, agents, or subcontractors have no interest which would constitute a real, potential, or apparent conflict of interest with respect to the performance of its duties under this Agreement as mandated by 42 CFR 488.314(a)(4). The Contractor shall continuously monitor its own and its employees' and subcontractors' activities for any conflict of interest that may emerge during performance of the Agreement. If any actual, potential, or apparent conflict of interest arises, the Contractor shall promptly disclose the details in writing to the HCA, consistent with the standards in CMS State Operations Manual Sections 4008 & 4008A.

D. Contractor's representations and warranties in Paragraphs A, B, and C of this Article 12 are material representations of fact upon which HCA relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to HCA if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A, B, and C 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, B, and C 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 HCA and notwithstanding anything in the Agreement to the contrary, HCA may immediately terminate the Agreement.

E. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B). All terms defined in the Social Security Act have the same meaning in this Article 12(C).

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

14. Merger.

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

15. Penalties for violation of law.

The Procurement Code, 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 HCA.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by HCA, the General Services Department/State Purchasing Division and the State Auditor. HCA shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of HCA to recover excessive or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless HCA 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 HCA and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

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

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

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage.

22. Invalid Term or Condition.

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

23. Enforcement of Agreement.

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

24. Notices.

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

To HCA:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

25. Debarment and Suspension.

A. Consistent with all applicable federal and/or state laws and regulations, as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor's certification in Paragraph A, above, is a material representation of fact upon which the HCA 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 HCA'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 HCA, the HCA 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 HCA when it requests subcontractor approval from the HCA. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HCA may refuse to approve the use of the subcontractor.

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

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

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

- 1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and
- 2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

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

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

27. Non-Discrimination.

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

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

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

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

28. Drug Free Workplace.

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

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

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

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

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

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

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

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

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

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

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

(iv) The Contractor’s policy of maintaining a drug-free workplace;

(iv) 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;

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

d) 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:

(ii) 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;

- d) Notify the HCA 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:
 - (ii) 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 HCA, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

29. Findings and Sanctions.

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

B. The Contractor will make repayment of any funds expended by the HCA, 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 HCA 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 HCA officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

30. Data Protection

A. Compliance with Security, Privacy, and Breach Notification Rules. The Parties will comply with Privacy and Security provisions of New Mexico state law and HIPAA, as amended (45 CFR Parts 160 & 164) regarding the privacy and security of health information. Contractor acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement attached hereto and incorporated by reference as Exhibit ____.

B. Implementation of a Data Privacy Policy. The Contractor shall implement, maintain, and enforce a data privacy policy designed to ensure that all records and information entrusted to the Contractor remain confidential. The Contractor shall impose equivalent confidentiality and data privacy obligations on all subcontractors.

C. Auditing. The Contractor shall maintain a log of all accesses to confidential data and make such logs available to the HCA upon request for auditing purposes.

31. Authority.

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

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

By: _____
Agency

Date: _____

By: _____
Agency's Legal Counsel – Certifying legal sufficiency

Date: _____

By: _____
Agency's Chief Financial Officer

Date: _____

By: _____
Contractor

Date: _____

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

ID Number: 00-000000-00-0

By: _____
Taxation and Revenue Department

Date: _____

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

By: _____
GSD/SPD Contracts Review Bureau

Date: _____

EXHIBIT

BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (this “**Agreement**”) is made by and between Employer Group (“**Covered Entity**”) and _____ (the “**Business Associate**”), jointly the “the Parties” and individually a “Party.”

RECITALS

A. Covered Entity and Business Associate are Parties to and have entered into a Professional Services Agreement, of which this Business Associate Agreement is an Exhibit, (“Underlying Agreement”) under which Business Associate provides services involving the creation, receipt, use, disclosure, maintenance or transmission of Protected Health Information that Business Associate receives from or on behalf of Covered Entity (collectively, “PHI”).

B. The Parties intend to protect the privacy and provide for the security of PHI that may be stored or transmitted through the terms of the Underlying Agreement in compliance with: (i) the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009; and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Omnibus Final Rule (“the HIPAA Final Rule”), which amended the HIPAA Privacy and Security Rule pursuant to the HITECH Act, extending certain HIPAA obligations to business associates and their subcontractors.

C. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and Security Rule (as those terms are defined below), and the HIPAA Final Rule, including but not limited to, Title 45, §§164.314(a)(2)(i), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R”).

D. Covered Entity and Business Associate desire to enter into this Agreement to ensure the protection and proper use and disclosure of PHI and each of the Parties’ compliance with HIPAA.

NOW THEREFORE, in consideration of the mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covered Entity and Business Associate agree as follows:

AGREEMENT

1. Definitions.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information (“PHI”), Required By Law, Secretary, Subcontractor, Unsecured Protected Health Information and Use. Specific definitions include:

(a) **Affiliate:** “Affiliate” means any corporation, limited liability company or other entity, directly or indirectly controlling, controlled by, or under common control with a party. “Control,” including “controlling”, “controlled by” or “under common control with” means the power to direct the affairs of a party by reason of (i) having the power to elect or appoint, through ownership, membership or otherwise, either directly or indirectly, a majority of the governing body of such party; (ii) owning or controlling the right to vote a majority number of the shares of voting stock, nonprofit membership interests or other voting interest of such party; or (iii) having the right to direct the general management of the affairs of such party by contract or otherwise.

(b) **Business Associate:** “Business Associate” shall have the same meaning as the “business associate” at 45 C.F.R. §160.103, and in reference to the Party to this Agreement.

(c) **Covered Entity:** “Covered Entity” shall have the same meaning as the term “Covered Entity” at 45 C.F.R. 160.103, and in reference to the Party to this Agreement.

(d) **Disclosure:** “Disclosure” shall mean the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

(e) **Electronic Protected Health Information” and/or EPHI:** “Electronic Protected Health Information” means Protected Health Information that is created, received, maintained, or transmitted by Electronic Media as defined at 45 C.F.R. §160.103, and includes without limitation, any EPHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity.

(f) **HIPAA:** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-91, as amended, and related HIPAA regulations (45 C.F.R. Part 160 and 164).

(g) **HIPAA Rules:** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160, 162, and 164, and as amended.

(h) **HITECH Standards:** “HITECH Standards” shall mean the privacy, security, and breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated.

(i) **Privacy Rule:** “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subpart A and Subpart E, as amended.

(j) **Security Incident:** “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(k) **Security Rule:** “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information at 45 C.F.R. Parts 160, 162, and 164, and as amended.

(l) Capitalized terms used in this Agreement and not otherwise defined herein, have the same meaning as set forth in the Privacy Rule, the Security Rule, and the HIPAA Final Rule, which definitions are incorporated into this Agreement by reference. A change to HIPAA which modifies any defined HIPAA term, or which alters the regulatory citation for the definition, shall be deemed incorporated into this Agreement.

2. General Provisions.

(a) Effect. The provisions of this Agreement shall control with respect to PHI. The terms and provisions of this Agreement shall supersede any conflicting or inconsistent terms and provisions of the Underlying Agreement to the extent of such conflict or inconsistency, except that in the event that any term of provision of the Underlying Agreement provides for an additional restriction on the use or disclosure of PHI or other Covered Entity data, the more restrictive provision shall control. This Agreement shall not modify or supersede any other provision of the Underlying Agreement.

(b) No Third-Party Beneficiaries. The Parties have not created and do not intend to create by the Agreement any third-party rights, including but not limited to, third-party rights for Members or patients of Covered Entity.

(c) HIPAA Amendments. Any future amendment to HIPAA affecting Business Associate agreements is hereby incorporated by reference into this Agreement in its entirety, effective on the later of the of the effective date of this Agreement or such subsequent date as may be specified by HIPAA.

(d) Regulatory References. A reference in this Agreement to a section in HIPAA means the section as it may be amended from time-to-time.

(e) Interpretation. This Agreement is intended to comply with HIPAA. If there is any ambiguity in this Agreement, it will be resolved to permit compliance with HIPAA.

3. Permitted Uses and Disclosures of PHI.

(a) Performance of the Agreement for Covered Entity. Except as otherwise limited in this Agreement, Business Associate may make any and all uses of PHI necessary to perform its obligations under the Underlying Agreement provided that any such Use or Disclosure would not violate HIPAA if done by Covered Entity. All other uses not authorized by this Agreement are prohibited.

(b) Management, Administration, and Legal Responsibilities. Except as otherwise limited in this Agreement, Business Associate may Use and Disclose PHI for the proper management and administration of Business Associate and/or to carry out the legal responsibilities of Business Associate, provided that any Disclosure may occur only if: (1) Required By Law; (2) Business Associate makes uses or disclosures in accordance with the minimum necessary requirements of HIPAA; (3) 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, except where a "limited data set" is not practicable in order to accomplish those activities, or (4) Business Associate obtains written reasonable assurances from the person to whom the PHI is Disclosed that it will be held confidentially 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 Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

(c) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity to the extent specifically authorized within the Underlying Agreement.

(d) Business Associate agrees to make uses and disclosures and requests for PHI of Covered Entity subject to the minimum necessary provisions that are applicable to Business Associate.

(e) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.

(f) Except as otherwise provided in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(g) Business Associate shall not directly or indirectly receive remuneration in exchange for any Protected Health Information of an Individual without Covered Entity's prior written approval and notice from Covered Entity that it has obtained from the Individual, in accordance with 45 C.F.R. § 164.508, a valid authorization that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by Business Associate.

(h) Business Associate may use or disclose Protected Health Information to communicate about a product or service, provided that such communication is made in a manner that does not constitute marketing as defined in 45 C.F.R. § 164.501 or otherwise constitute a use or disclosure that Covered Entity is prohibited from performing itself.

(i) Business Associate in consultation with Covered Entity may use Protected Health Information that is the subject of this Agreement to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j).

(j) The provisions of this Agreement notwithstanding, Business Associate is permitted use aggregated, de-identified data for internal benchmarking purposes and to satisfy mandated regulatory requirements that demand such data for reporting purposes, provided that it does so in accordance with HIPAA de-identification rules.

4. Obligations and Activities of Business Associate.

(a) Use and Disclosure. Business Associate shall not use or disclose PHI, and shall ensure that its officers, directors, owners, employees, agents and subcontractors do not use or disclose PHI, other than as permitted or required by this Agreement or the Underlying Agreement or as Required By Law. [45 C.F.R. §164.504(e)(2)(ii)(A)].

(b) Safeguards Against Misuse of Information. Business Associate agrees that it will implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement. To the extent Business Associate will create, receive, maintain, or transmit PHI in electronic format, (“**EPHI**”), Business Associate shall implement administrative, physical, and technical safeguards consistent with the HIPAA Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI, including, but not limited to, encryption of data in storage, i.e., data at rest, and in transit, i.e., data in motion, with at least a 256-bit encryption key. [45 C.F.R. §164.504(e)(2)(ii)(B)].

(c) Reporting of Breaches, Security Incidents, and Unauthorized Uses and Disclosures of PHI. Business Associate shall report promptly to Covered Entity without unreasonable delay and in any case within ten (10) calendar days of the date on which Business Associate first discovers it, any Breach of Unsecured PHI, any other use or disclosure of PHI not permitted by this Agreement, and any Security Incident of which it becomes aware, provided that notice is deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given. Business Associate shall provide to Covered Entity all information about a Breach of Unsecured PHI that is required at 45 C.F.R. §164.410, and, if requested by the HCA, provide information necessary for the Authority to investigate promptly the impermissible use or disclosure. Business Associate shall take all reasonable steps to mitigate the harmful effects of a Breach of Unsecured PHI, any other use or disclosure not permitted by this Agreement, and any Security Incident. Business Associate shall cooperate with Covered Entity’s efforts to mitigate the harmful effects of the Breach.

For purposes of this Section, “Unsuccessful Security Incidents” means, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use or Disclosure of PHI.

(d) Risk Assessment. When Business Associate determines whether an impermissible acquisition, access, use or disclosure of PHI poses a low probability of the PHI being compromised, the Business Associate shall document its assessment of risk in accordance with 45 CFR § 164.402 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 HCA, Business Associate shall make its risk assessments associated with the Services provided pursuant to the Underlying Agreement available to the HCA.

(e) Mitigation. If the HCA determines that an impermissible acquisition, access, use or disclosure of PHI, for which Business Associate or one of Business Associate's employees or agents was responsible, constitutes a Breach, and if requested by the HCA, 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 HCA about the timeliness, content and method of notice, and shall receive the HCA'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 HCA. In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the HCA or required by applicable law, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

(f) Disclosure to Subcontractors. Business Associate shall enter into a written agreement meeting the requirements of 45 C.F.R. §§164.504(e) and 164.314(a)(2) with each Subcontractor Business Associate that creates, receives, maintains, or transmits PHI on behalf of Business Associate to which the Subcontractor agrees to be bound to (1) the same or more stringent restrictions and conditions that apply to Business Associate with respect to such PHI; (2) appropriately safeguard the PHI; and (3) comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C of the Security Rule. Business Associate remains responsible for its subcontractors’ compliance with obligations in this Agreement.

(g) Access to Information. Within ten (10) business days of a request by Covered Entity for access to PHI in a Designated Record Set about an individual, Business Associate shall make PHI available to Covered Entity for as long as such PHI is maintained as required by 45 C.F.R 164.524. In the event any individual requests access to PHI directly from Business Associate, Business Associate shall within five (5) business days forward such request to Covered Entity. Any denials

of access to the PHI requested shall be the responsibility of Covered Entity that is the source of the PHI.

(h) Availability of PHI for Amendment. Within ten (10) business days of receipt of a request from Covered Entity for the amendment of an individual's PHI in a Designated Record Set, Business Associate shall provide such PHI to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. 164.526. In the event any individual requests an amendment to PHI directly from Business Associate, Business Associate shall within five (5) business days forward such request to Covered Entity that is the source of the PHI.

(i) Accounting of Disclosures. Within ten (10) business days of notice by Covered Entity to Business Associate that Covered Entity has received a request for an accounting of disclosures of PHI regarding an individual, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession and is required for Covered Entity to make the accounting required by 45 C.F. R. 164.528. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall, within five (5) business days, forward such request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such requested accounting. Business Associate shall implement an appropriate record keeping process to enable it to comply with the requirements of this Section 4(i).

(j) Compliance With Covered Entity Obligations. To the extent Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate shall comply with the requirements that apply to Covered Entity in the performance of such obligation.

(k) Availability of Books and Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to Covered Entity and to the Secretary for purposes of determining Covered Entity's or Business Associate's compliance with HIPAA. [45 C.F.R. §164.504(e)(2)(ii)(I).]

(l) Restrictions: Limitations in Notice of Privacy Practices. Business Associate shall comply with any reasonable limitation on Covered Entity's notice of privacy practices to the extent that such limitation may affect Business Associate's Use and Disclosure of PHI. Business Associate shall comply with any restriction that Covered Entity is required to abide by under 45 C.F.R. §164.522 and any reasonable restriction on the Use and Disclosure of PHI that Covered Entity has agreed to, to the extent such restriction may affect Business Associate's Use or Disclosure of PHI.

(m) Indemnification. Business Associate will defend any action brought against Covered Entity by a third-party to the extent that the action is based upon a claim that Business Associate has violated HIPAA or such third-party's privacy or confidentiality rights (each, a "**Third-Party Claim**"). Business Associate shall reimburse, indemnify and hold harmless Covered Entity for costs, damages, penalties, expenses (including reasonable attorney's fees) and any final award of damages or settlement amount (collectively, "**Losses**") resulting from (i) a Third-Party Claim, (ii)

any breach of this Agreement and (iii) Unauthorized Use or Disclosure, Security Incident or Breach of PHI maintained by Business Associate or Business Associate's agent or subcontractor. For the avoidance of doubt, Losses resulting from the incidents set forth in (ii) and (iii) above include, without limitation: (1) fines or settlement amount owed to a governmental authority; (2) the cost of any notifications of a breach of the privacy or confidentiality of an individual's personally identifiable information to the individual affected by the breach, a governmental authority, a credit bureau or media outlet; (3) credit monitoring for affected individuals; (4) call center services needed to respond to inquiries from affected individuals; or (5) other reasonable breach response steps taken by Covered Entity to comply with HIPAA or other applicable law.

5. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

- (a) Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 C.F.R. §164.520, to the extent such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, revocation of the permission of any individual to use or disclose his or her PHI, to the extent such changes may affect Business Associate's use or disclosure of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI.

6. Term and Termination.

- (a) Term. The term of this Agreement shall commence on the Effective Date of the Underlying Agreement and expire at the later of (a) the expiration or termination of Underlying Agreement and (b) such time that Business Associate and its agents and subcontractors have returned to Covered Entity or destroyed PHI.
- (b) Termination If Business Associate breaches any material term of this BAA, the Covered Entity may either:
 - 1. provide an opportunity for Business Associate to cure the Breach and the Covered Entity may terminate this BAA without liability or penalty in accordance with this Termination section, if Business Associate does not cure the breach within the 30 days after receipt of written notice; or,
 - 2. immediately terminate this BAA, without liability or penalty if the Covered Entity determines that cure is not reasonably possible; or,
 - 3. if neither termination nor cure are feasible, the Covered Entity shall report the breach to the Secretary.

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

(c) Effect of Breach. Notwithstanding the rights of the Parties pursuant to other provisions of this Agreement or the Underlying Agreement, if Business Associate breaches its obligations under this Agreement, Covered Entity may, at its option (i) exercise any of its rights of access and inspection under this Agreement or the Underlying Agreement; or (ii) require Business Associate to submit to a plan of monitoring and reporting, as Covered Entity may determine necessary to maintain compliance with this Agreement and such plan shall be made part of this Agreement. Covered Entity's remedies under this Section 6(c) shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other remedy.

(d) Obligations of Business Associate Upon Termination. Business Associate's obligations under this Agreement will terminate only upon the termination of this Agreement. Upon termination of the Underlying Agreement, Business Associate shall (i) return to Covered Entity all PHI that it maintains in any form or if expressly approved in writing by Covered Entity, destroy such PHI in accordance with this Agreement; and (ii) retain no copies of such PHI. Business Associate shall ensure the return or destruction of PHI created, received, or maintained by Subcontractors. Notwithstanding the foregoing, the parties acknowledge and agree that Business Associate may keep copies of PHI for archival and legal purposes because return or destruction of thereof is infeasible, however such PHI shall continue to remain subject to the terms and conditions of this BAA for as long as it is retained by Business Associate and the use and disclosure of such PHI is limited to those purposes that make the return or destruction of such information infeasible.

7. No Agency Relationship. It is not intended that an agency relationship (as defined under the Federal common law of agency) be established hereby expressly or by implication between Covered Entity and Business Associate under HIPAA or the Privacy Rule, Security Rule, or Breach Notification Rule. No terms or conditions contained in this Agreement shall be construed to make or render Business Associate an agent of Covered Entity.

8. Severability. In the event that any provision of this Agreement is found to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, but rather the remainder of this Agreement shall be enforced to the greatest extent of the law.

9. Survival. The obligations of Business Associate under this Agreement shall survive the termination of this Agreement and the Underlying Agreement.

10. Notices. Any notice required to be given pursuant to the terms of this Agreement shall be in writing and shall be hand-delivered or sent by first-class mail to the Party to receive such notice at the addresses listed below. Either Party to this Agreement may change the address to which notice is to be submitted by notice delivered pursuant to this Section 10. A Party giving notice shall send a notice to any changed address of the recipient of which it has actual knowledge, whether or not the recipient has given the other Party notice of its changed address hereunder.

Covered Entity:
Health Care Authority (HCA)
P.O. Box 2348
Santa Fe, NM 87504-2348

Business Associate:

11. Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument. Copies of signatures sent by facsimile transmission or scanned and sent by email are deemed to be originals for purposes of execution and proof of this Agreement.

APPENDIX D

COST RESPONSE FORM

The offeror should indicate a total cost per state fiscal year for implementation of their service. The cost should be inclusive of completing all of the specifications related Random Moment Surveys, Administrative Claiming & Direct Medical Service Cost Reporting & Settlement. The offeror will be evaluated based on the total cost of implementation of the program.

Survey Type	Price per Surveyor
ESRD Recertification	
ESRD Recertification with up to 3 complaints	
Hospice Recertification	
Hospice Recertification with up to 3 complaints	
HHA Recertification	
HHA Recertification with up to 3 complaints	
Hospital Complaint Survey (up to 5 complaints)	
Nursing Home Recertification	
Nursing Home Recertification with up to 3 complaints	
Complaint Survey Only (up to 5)	
LSC Nursing Home Recertification only	
LSC Hospital Recertification only	
LSC ESRD Recertification only	
LSC Recertification add-on *	
ICF/IID recertification	
ICF/IID Recertification with up to 3 complaints	

*In conjunction with another survey contracted

FIRM NAME:	
SIGNATURE:	DATE:

APPENDIX E

Letter of Transmittal Form

Please complete this form in its entirety. Failure to **sign and/or submit** this form will result in the disqualification of Offeror's proposal.

RFP# 27-630-0800-0013

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED TIN#	
NM BTIN#	

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

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

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

-

3. Will any subcontractor/s be used in the performance of any resultant contract? (Select one):

____ No.

____ Yes. Identify subcontractor/s: _____

4. Will any other entity/-ies (such as a State Agency, reseller, etc., that is not a subcontractor identified in #3 above) be used in the performance of any resultant contract? (Select one)

____ No.

____ Yes. Identify entity/-ies: _____

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

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

Sign: _____

Date: _____

(Must be signed by the individual identified in item #2.A, above.)

APPENDIX F

ORGANIZATIONAL REFERENCE QUESTIONNAIRE

The State of New Mexico, as a part of the RFP process, requires Offerors to list a minimum of three (3) organizational references in their proposals. The purpose of these references is to document Offeror's experience relevant to the Section IV.A, Detailed Scope of Work in an effort to evaluate Offeror's ability to provide goods and/or services, performance under similar contracts, and ability to provide knowledgeable and experienced staffing.

Offeror is required to send the following Organizational Reference Questionnaire to each business reference listed in its proposal, as per Section IV.B.2. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to: Micah Clokey, Procurement Manager; Micah.Clokey@hca.nm.gov by November 12, 2026, MST/MDT for inclusion in the evaluation process. The Questionnaire and information provided will become a part of the submitted proposal. Businesses/Organizations providing references may be contacted for validation of content provided therein.

RFP #27-630-0800-0013
ORGANIZATIONAL REFERENCE QUESTIONNAIRE
FOR:

(Name of Offeror)

This form is being submitted to your company for completion as a reference for the organization listed above. Submit this Questionnaire to the State of New Mexico, Health Care Authority via e-mail at:

Name: Micah Clokey, Procurement Manager
Email: Micah.Clokey@hca.nm.gov

Forms must be submitted no later than November 12, 2026, at 5:00pm MST/MDT, and **must not** be returned to the organization requesting the reference. References are **strongly encouraged** to provide comments in response to organizational ratings. The comments you provide will help the State evaluate the above-referenced Offeror's service history, successful execution of services and evidence of customer/client satisfaction.

For questions or concerns regarding this form, please contact the State of New Mexico **Procurement Manager** at Micah.Clokey@hca.nm.gov; 505-469-3925. When contacting the Procurement Manager, include the Request for Proposal number provided at the top of this page.

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

QUESTIONS:

1. In what capacity have you worked with this vendor in the past?

COMMENTS:

2. How would you rate this vendor's performance and expertise?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

3. How would you rate the vendor's ability to consistently manage and complete the volume of work assigned under the contract within the required timeframes?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with the vendor's communication?

____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

5. How would you rate the quality, completeness, and accuracy of the Statements of Deficiencies prepared by the vendor, including whether the findings were clearly documented and supported by the evidence obtained during the survey or investigation?

_____ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable, N/A = Not applicable)

COMMENTS:

6. Were there any concerns about surveyor competency, consistency, or adherence to CMS procedures?

COMMENTS:

7. Were there ever concerns related to conflict of interest, inappropriate facility interactions, or deviation from regulatory requirements?

COMMENTS:

8. Did the vendor provide sufficient evidence demonstrating that a thorough and complete investigation was conducted?

COMMENTS:

9. Would you contract with this vendor again? Why or why not?

COMMENTS: