

NEW MEXICO HEALTH CARE AUTHORITY

REQUEST FOR PROPOSALS (RFP)

**CREATION AND MAINTENANCE OF A PREFERRED
DRUG LIST AND SUPPLEMENTAL REBATE
PROGRAM**



RFP# 26-630-8000-0002

RFP Release Date: April 16, 2025

Proposal Due Date: May 5, 2025

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 a qualified contractor to develop and maintain a preferred drug list (PDL) and supplemental rebate program.

B. BACKGROUND INFORMATION

A PDL and the associated supplemental rebate is an established means by which state Medicaid programs have standardized care while also being fiscally responsible with state and federal funds. The state of New Mexico's Medicaid program covers 838,000 lives with nearly 167,000 in Fee-for-Service, with the remaining members split between four Managed Care Organizations (MCOs). While the MCO has its own preferred drug list, currently FFS Medicaid does not. The lack of an aligned preferred drug list across all Medicaid plans places increased burdens on members and providers determining what medications are covered and also represents an opportunity for cost savings within the state.

C. SCOPE OF PROCUREMENT

1. Creation and maintenance of a preferred drug list (PDL)
2. Establish a Pharmaceutical and Therapeutics (P&T) Committee
3. Negotiations and establishment of a supplemental rebate program
4. Processing of supplemental rebates
5. Regular meeting with the state to address on-going needs

The term of the contract will be for one year with three one-year renewals.

This RFP will result in a single award.

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 Medical Assistance Division 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: Robert B. Kenney, Procurement Manager

Telephone: (505) 469-2822
Email: RobertB.Kenney@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 Health Care Authority (HCA).
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section II.B.12.** 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 HCA's e-Procurement System, Bonfire. Refer to Section III.B for instructions.

F. DEFINITION OF TERMINOLOGY

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

1. **"Agency"** means the Health Care Authority or HCA.
2. **"Award"** means the final execution of the contract document.
3. **"Bonfire"** means Health Care Authority's e-Procurement System
4. **"BTIN"** means New Mexico Business Tax ID Number
5. **"Business Hours"** means weekdays (Monday – Friday) 8:00 AM to 5:00 PM MST/MDT, whichever is in effect on the date given.
6. **"Close of Business"** means weekdays (Monday – Friday) 5:00 PM MST/MDT, whichever is in effect on the date given.
7. **"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.

8. **“Contract”** means any agreement for the procurement of items of tangible personal property, services or construction.
9. **“Contractor”** means any business having a contract with a state agency or local public body.
10. **“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.
11. **“Desirable”** – the terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor.
12. **“Electronic Submission”** means a successful submittal of Offeror’s proposal in the Bonfire system.
13. **“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.
14. **“Evaluation Committee”** means a body appointed to perform the evaluation of Offerors’ proposals.
15. **“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.
16. **“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 resulting from the procurement has been affixed to the contract thus making it fully executed.
17. **“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.6.
18. **“HCA”** means the Health Care Authority
19. **“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.
20. **“IT”** means Information Technology.

21. **“MAD”** means Medical Assistance Division
22. **“Managed Care Organization”** Also referred to MCO, means a private entity that contracts with HCA to provide core benefits and services to New Mexico Medicaid enrollees in exchange for a monthly prepaid capitated amount per member. The entity is regulated by the New Mexico Office of Superintendent of Insurance with respect to licensure and financial solvency, pursuant to NM 59A-42A-3. but shall, solely with respect to its products and services offered pursuant to the New Mexico Medicaid Program be regulated by the New Mexico Health Care Authority.
23. **“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.
24. **“Minor Irregularities”** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
25. **“National Drug Code”** Also referred to as NDC, meant the identifying drug number maintained by the Food and Drug Administration (FDA). For the purposes of this RFP, the complete eleven (11) digit NDC number will be used including labeler code (which is assigned by the FDA and identifies the manufacturer), product code (which identifies the specific product or formulation), and package size code.
26. **“Offeror”** is any person, corporation, or partnership who chooses to submit a proposal.
27. **“PDL”** means preferred drug list.
28. **“PBA”** means pharmacy benefit administrator
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. **“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.
34. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
35. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that their 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.
36. **“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.
37. **“Sealed”** means, in terms of electronic submission, an Offeror’s proposal and all accompanying documents has been completely and successfully uploaded into HCA’s Bonfire system prior to the submission deadline stated in the RFP.
38. **“Single Source Award”** means an award of contract for items of tangible personal property, services or construction to only one Offeror.
39. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.
40. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offeror.
41. **“State (the State)”** means the State of New Mexico.
42. **“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.
43. **“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.

44. **“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.B.1. (E.g. “We concur,” “Understands and Complies,” “Comply,” “Will Comply if Applicable,” etc.
45. **“TIN”** means Federal Tax ID Number.
46. **“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.
47. **“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.

<https://newmexicohsd.bonfirehub.com/portal/>

Other relevant links:

[Pharmacy Information - New Mexico Health Care Authority](#)

[Medicaid managed Care Policy Manual Section 20 - Pharmacy](#)

Medicaid Managed Care Formularies:

[Blue Cros Blue Shield of New Mexico](#)

[Presbyterian Health Plan](#)

[Molina Healthcare](#)

[United Healthcare](#)

[New Mexico Administrative Code 8.324.4](#)

[New Mexico State Plan section 12.a. Prescribed Drugs](#)

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	April 16, 2025
2. Acknowledgement of Receipt Form	Potential Offerors	April 23, 2025
3. Deadline to submit Written Questions	Potential Offerors	April 25, 2025
4. Response to Written Questions	Procurement Manager	April 30, 2025
5. <i>Submission of Proposal</i>	<i>Potential Offerors</i>	<i>May 5, 2025</i>
6.* Proposal Evaluation	Evaluation Committee	May 6 to May 15, 2025
7.* Selection of Finalists	Evaluation Committee	May 16, 2025
8.* Oral Presentation(s)	Finalist Offerors	TBD
9.* Best and Final Offers	Finalist Offerors	May 27, 2025
10.* Finalize Contractual Agreements	Agency/Finalist Offerors	May 30 to June 6, 2025
11.* Contract Awards	Agency/ Finalist Offerors	June 9, 2025
12.* Protest Deadline	HCA	June 24, 2025

* Dates indicated in Events 6 through 12 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 Health Care Authority (HCA) on 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 HCA Procurement Manager RobertB.Kenney@hca.nm.gov, to have their organization placed on the procurement Distribution List. The form must be returned to the

Procurement Manager by 5:00 pm 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. 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 5:00 pm 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.

4. 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:
<https://newmexicohsd.bonfirehub.com/portal/>

5. Submission of Proposal

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

ALL PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 PM 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 HCA's Bonfire system by the deadline set forth in this RFP. The 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 HCA's Bonfire system. Refer to Section III.B.1 for instructions. Proposals submitted by facsimile, or other electronic means other than through the HCA's Bonfire 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.

6. 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.

7. 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.

8. Oral Presentations

Finalist Offerors, as selected per Section II.B.7 above, may be required to conduct an oral presentation at a venue to be determined as per schedule Section II.A., Sequence of Events, or as soon as possible thereafter. If Oral Presentations are held, Finalist Offerors may be required to make their presentations through electronic means (Microsoft Teams, Zoom, etc). The Agency will provide Finalist Offerors with an agenda and applicable details; including an invitation to the event. Whether or not Oral Presentations will be held is at the sole discretion of the Evaluation Committee.

9. Best and Final Offers

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining the best and final offers 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 the finalist Offerors' 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 submitted timely 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 the 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 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 setup 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. 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 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, 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 Bonfire.

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 include federal funds. See §13-1-21(J) NMSA 1978

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 (HCA's Procurement Portal, Bonfire Interactive, can be accessed at [New Mexico Health Care Authority \(bonfirehub.com\)](http://New Mexico Health Care Authority (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 HCA's electronic procurement portal (Bonfire) 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.B.** 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.7 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 as **unredacted** (def. Section I.F) versions for evaluation purposes; and
 - ii. One (1) **redacted** (def. Section I.F) 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 HCA's e-Procurement Portal (Bonfire) by the submission deadline in Section II.A.5.

Any proposal that does not adhere to the requirements of this Section and **Section III.B.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 (Appendix E)
2. Signed Campaign Contribution Form (Appendix B)
3. Signed Suspension and Debarment Form (Appendix G)
4. Table of Contents
5. Proposal Summary (Optional)
6. Response to Contract Terms and Conditions (from Section II.C.15)
7. Offeror's Additional Terms and Conditions (from Section II.C.16)
8. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
 - a. Organizational Experience
 - b. Organizational References (Appendix F)
 - c. Oral Presentation (if applicable)
 - d. Mandatory Specification
 - e. Desirable Specification
 - f. Financial Stability - Financial information considered confidential, as defined in Section I.F. and detailed in Section II.C.8, should be placed in the **Confidential Information** file, per Section III.A, as applicable)
 - g. Performance Surety Bond (not applicable for this RFP)
 - h. New Mexico/Native American Resident Preferences (not applicable for this RFP)
9. Other Supporting Material (if applicable)

Cost Proposal:

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.

1. 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.

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)

3. Suspension and Debarment Form

The Offeror must complete an unaltered Suspension and Debarment Form and submit a signed copy with the Offeror's proposal. (See Appendix G)

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. 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

Pharmacy & Therapeutics (P&T) Committee

The Contractor shall provide the following support for the Medicaid P&T Committee including, but not limited to:

- Develop recommendations and provide detailed strategies for maximizing the Department's annual savings resulting from the implementation of the PDL. These recommendations shall provide specific written suggestions for enhancing rebates and lowering net pharmacy costs through PDL products and other areas as requested by the Agency;
- Support, attend, and present clinical and cost information for all P&T Committee meetings each year;
- Develop the P&T Committee recommendations following the meeting to be approved by the Chief Medical Officer of Medicaid
- Develop clinically sound and cost-effective recommendations at the request of the Agency to help the Agency manage the PDL
- Present clinical monographs to the Agency at least thirty calendar days prior to the meeting date
- Provide clinical and cost support for all P&T Committee meetings. The Contractor will prepare informational packets for the P&T Committee members and Agency staff prior to any scheduled meetings; and
- Provide consultation including P&T Committee support as directed by the Agency

Develop and Maintain Preferred Drug List

The Contractor shall assist in the management of a PDL by providing the following, including, but not limited to:

- Work in conjunction with the Agency to develop a PDL that is clinically sound, cost-effective, and minimally disruptive to New Mexico's Medicaid recipients and their providers;
- The PDL should include physician/provider administered drugs (PAD) as directed by the Agency ;
- Incorporate data from stakeholders in development of the PDL. This should include an evaluation of current PDLs for Medicaid MCOs, utilization patterns, and discussions with stakeholders including prescribers, pharmacists, and community pharmacies;
- Produce systematic reviews of each therapeutic class or specific drug including monographs which summarize the relative safety and efficacy of each drug within the therapeutic class and information for inclusion or exclusion of drugs on the PDL within each class including the utilization of drugs. The monographs must include all relevant evidence and citations regarding drugs in this report including the comparative efficacy, side effects, dosing, prescribing trends and indications;
- Develop a review schedule and post for the public to allow for review of all therapeutic classes on an annual basis. The review schedule must be equally weighted across all

meetings to allow for a uniform schedule. The review schedule must include “off cycle” reviews of products new to the market and not included in the annual therapeutic class review;

- Present findings to the P&T committee;
- Develop recommendations and provide detailed strategies for maximizing the Agency’s annual savings resulting from the implementation of the PDL. These recommendations shall provide specific written suggestions for enhancing rebates and lowering net pharmacy costs through PDL products and other areas as requested by the Agency;
- Assist the State in maintaining ongoing provider communication regarding the PDL and savings associated with the PDL. Upon request, contractor will provide documentation necessary for producing printed materials, including but not limited to periodic articles for the New Mexico Medicaid provider newsletter, and assisting state staff with the development of articles for providers’ professional organizations and/or professional journals;
- Design the PDL listing in a format agreed to by the Agency; and maintain documents and information necessary for inclusion in the claims processing system;
- Provide written responses to written inquiries from any interested parties concerning inclusion of drugs on the PDL as directed by the Agency;
- Assist the Agency in the development of prior authorization and step-care criteria when applicable to provide appropriate access to non-preferred drugs; and,
- Work cooperatively with other Agency vendors, including but not limited to, the PBA, Point-of-Sale, RDUR vendor and the fiscal agent, on initiatives as necessary.

Administer Supplemental Rebate Program

The Contractor shall assist the State in supplemental rebate administration in the following manner, including, but not limited to:

- Negotiate supplemental rebates on the Agency’s behalf and provide full disclosure to the Agency of all information involved in the negotiation. The Contractor shall provide complete transparency of all transactions, negotiations and contracts between the Contractor, the Agency, other Agency contractors, and each manufacturer/labeler. If the state selects to pursue supplemental rebates for PAD (J-code), and/or Medicaid coordinated/managed care claims, the same requirements are applicable;
- In collaboration with the Agency and Agency’s rebate vendor, determine the best methodology for calculating State Supplemental Rebates paid by pharmaceutical manufacturers and develop a template to be used in contract negotiations with pharmaceutical manufacturers that will meet CMS approval. The Contractor’s methodology is subject to the Agency’s approval and ongoing adaptation to the Agency’s needs;
- Negotiate agreements for each class of drug with pharmaceutical manufacturers prior to the P&T Committee review of the class. Said contracts must be kept confidential in accordance with federal confidentiality guidelines. Renegotiations may be necessary in response to changes in the marketplace;

- Obtain bids from pharmaceutical manufacturers in the form of executable Supplemental Rebate Agreements (the Contractor and manufacturers are required to use the rebate agreement agreed on by the Agency);
- Notify the Agency before conducting a Supplemental Rebate Agreement negotiation
- Assist the Agency in obtaining CMS approval of the State Supplemental Rebate Agreements. The Contractor must submit all State Supplemental Rebate Agreements and the PDL for each therapeutic class to the Agency for approval;
- Present Supplemental Rebate Agreements signed by the manufacturer to the Agency thirty calendar days after the Agency's approval of the PDL;
- Provide an opportunity for all affected pharmaceutical manufacturers to negotiate supplemental rebate agreements to lower the overall pharmacy costs to the State prior to the P&T Committee's review of a product.;
- Provide ongoing rebate analysis and specific suggestions for enhancing rebates and/or lowering overall pharmacy costs. This analysis shall include a review of the utilization data for performance under existing drug classes, and areas for improvement for both clinical impact and cost effectiveness of PDL classes. Develop supplemental rebate agreements to comply with federal and state laws, rules, regulations, and policies. The agreements will be made between the Agency and the pharmaceutical manufacturers in a format approved by the Agency and the Centers for Medicare and Medicaid Services (CMS). The Contractor will work with the Agency to ensure CMS approval;
- Provide written responses to written inquiries from any interested parties related to supplemental rebates as requested by the Agency;
- Provide the capability to negotiate as a stand-alone state, in a multi-state purchasing pool, and as a state single PDL; and,
- Implement multi-state pooling initiatives in accordance to guidelines established by CMS or single state initiative. In addition, the Contractor must have clear understanding of federal and state statutes and regulations governing the Medicaid Program, Medicare Part D and State Supplemental Rebates

Supplemental Drug Rebate Processing

The Contractor shall manage the state supplemental manufacturer drug rebate program by providing the following support, including but not limited to:

- Manage all aspects of the Supplemental Drug Rebate invoicing processes for supplemental rebate programs to include both outpatient prescription drugs and provider-administered drugs;
- Invoice and collect supplemental rebates for medications dispensed by pharmacies and administered by providers to Medicaid clients in FFS and managed care;
- Interface with the Agency and any contractor(s)/vendor(s) of the Agency, including the Agency's PBA to receive the rebate labeler data needed to perform the rebate functions contained within this RFP;
- Interface with the Agency and any contractor(s)/vendor(s) of the Agency to receive the Unit Rebate Amount (URA), Unit Rebate Offset Amount (UROA), and Supplemental Unit Rebate Amount (SURA) data needed to perform the rebate functions;
- Maintain full confidentiality protections for all pricing data submitted, consistent with State and federal guidelines;
- Utilize data from a national drug compendia to validate claims data, inform conversion factors, and carry out other functions necessary for the generation and validation of

invoices. The data needs to be compatible and can interface the Agency and/or it's contractor(s)/vendor(s). The Contractor may elect to interface with the Agency and it's contractors to obtain this data;

- Interface with the Agency and it's contractor(s)/vendor(s) to receive utilization data, including FFS claims and MCO encounters;
- Manage utilization data identifying non-rebateable claims;
- Carry out a number of variance analysis processes to determine whether the utilization data received from the Fiscal Intermediary is complete and accurate (i.e. failure to submit all claims from FFS and all MCOs; submittal of corrupt data; wide swings in utilization by plan; outlier claims identified by paid amount, unit quantity, or other factors; etc.);
- Provide network administration in coordination with MMIS or other assigned entity;
- Follow Federal Invoicing Processes and Procedures;
- Generate invoices and receive payments from each labeler/manufacturer. Invoices shall state the unit type, quantity of units used, and the expected total rebate amount for each National Drug Code (NDC) of the labeler/manufacturer for the billing quarter for drugs dispensed by providers to eligible beneficiaries. Payments shall be forwarded to the Agency in a manner approved by the Agency. Invoice pharmaceutical manufacturers on a quarterly basis for supplemental rebates. The Offeror's proposal must provide a description of their approach to calculating supplemental rebates to the Agency; including methods to ensure standard federal rebate units reconcile with supplemental rebate units;
- Process payments of drug rebate invoices timely and in compliance with the Agency's fiscal unit;
- In collaboration with the Agency and the Agency's contractor/vendor, resolve all disputes as they relate to the Supplemental Rebate Program in accordance with guidance provided by CMS in the Dispute Resolution Program Best Practices section regarding Medicaid Drug Rebate Dispute Resolution Program. Dispute resolution must also be consistent with MAD regulations, policies and procedures.
- All manufacturer/labeler disputes must be timely researched, corrected, reconciled, resubmitted if required, and the dispute resolution completed for the Supplemental Drug Rebate. the Agency must be notified on all dispute resolution outcomes monthly;
- Assist in quarterly CMS reporting as related to drug rebates and other areas as assigned
- Prepare and submit various quarterly and annual drug rebate reports to the Agency as described herein. If after preparation and submission, an error is discovered either by the Contractor or the Agency, the Contractor shall correct the error(s) and resubmit accurate reports within ten 10 calendar days;
- Conduct financial analysis and perform special data analysis projects pertaining to the pharmacy program/drug rebate processing as requested;
- Track and report program productivity;
- Assist in the preparation of the Agency's Pharmacy budget as it relates to rebates as requested;
- Ensure that accurate and consistent information is given to program staff, drug manufacturers/labelers, providers, and recipients;
- Monitor policies and procedures to ensure compliance with laws and federal regulations
- Represent Medicaid in programmatic matters at various federal, state and local hearings, meetings and conferences;

- Perform other pharmacy related program activities as requested by the the Agency and/or their designee; and,
- Provide an automated system that maintains and tracks Supplemental Rebate payment records, invoicing data, collection information, historical reconciliation and prior period adjustments, dispute resolution and all other information concerning rebates from the pharmaceutical manufacturer/labeler on a National Drug Code (NDC) and an individual encounter/claim level. The automated system shall log, allocate and reconcile payments made to the State by manufacturers/labelers on an NDC and individual encounter/claim basis and by health plan contractor.

Annual Analysis and Recommendation Report

- The Contractor shall prepare a formal annual report outlining New Mexico Medicaid PDL Program Overview and Results. In the report, the Contractor shall provide a summary of the activities of the PDL for the State Fiscal Year and assess and report the strengths and weaknesses of the PDL program, complete with opportunities for future cost saving initiatives. All data in the report shall be referenced and include current trends and best practices in the pharmacy arena.

DELIVERABLES AND REPORTING

General Requirements

The Contractor shall:

- Provide clinical and contracting services required by the Agency to develop, implement and operate the New Mexico Medicaid Pharmacy Program PDL, supplemental rebate programs. The therapeutic classes to be managed will be the administrative decision of the Agency in consultation with the Contractor;
- Establish and maintain a database that has the capacity for data analysis, generation of ad hoc reports, both electronic and hard copy, and secure storage of supplemental drug rebate information as required under the contract;
- Develop recommendations and provide detailed strategies for maximizing the Agency's annual savings resulting from the implementation of the PDL. These recommendations shall provide specific written suggestions for enhancing rebates and lowering net pharmacy costs through PDL products and other areas as requested by the Agency;
- Upon reasonable notice, be available for appearances before the New Mexico Legislature or other interested parties, as requested by the Agency; and
- Deliver reports to the Agency, via email, unless otherwise directed by the Agency. All deliverables and correspondence from the successful Contractor must go through the designated point of contact from the Agency.

Quality Assurance Plan

- A Quality Assurance Plan shall be due ninety (90) calendar days from the execution of the contract.

Ad Hoc Reports

The Contractor shall:

- Prepare and submit any report as required and requested by the Agency, any designee of the Agency, and/or CMS that is related to the Contractor's duties and obligations under the Contract at no cost to the Agency. Any changes to the formats must be approved by the Agency prior to implementation;

- Clearly identify information considered to be of a proprietary nature by the Contractor at the time of submission;
- Modify reports as indicated by the Agency at no additional cost to the State; and
- Provide sample/other reports as requested.

Staffing Requirements

- The Contractor's administrative office shall maintain, at a minimum, business hours of 8:00 am to 5:00 pm Mountain Time, Monday through Friday, excluding recognized New Mexico State holidays and be operational on all regularly scheduled business days.
- Annually and on a date determined by the Agency, the Contractor shall submit:
 - An updated organization chart complete with the Key and Core Staff positions. The chart must include the person's name, title and telephone number, and portion of time allocated to the New Mexico Medicaid contract, other Medicaid contracts, and other lines of business;
 - A functional organization chart of the key program areas, responsibilities and the areas that report to that position; and A listing of all functions and their locations and a list of any functions that have moved outside of the State of New Mexico in the past contract year;
- The Contractor shall maintain appropriate personnel to respond to administrative inquiries from the Agency on business days;
- If the Contractor has notice that any temporary, permanent, subcontract, part-time or full-time Contractor staff has become an "ineligible individual" or is proposed to become ineligible based on pending charges, the Contractor shall remove said personnel immediately from any work related to this contract and notify the Agency within five (5) business days. For felony convictions, the Agency will determine if the individual should be removed from the contract project;
- If any of the organizational or key personnel information has changed since the response to the RFP, the Contractor must update and provide this information to the Agency no later than the contract execution date. The same is applicable to any subcontractor information;
- The Contractor shall provide the appropriate staff representation for attendance and participation in relevant meetings and/or events scheduled by the Agency; and
- The Contractor shall remove or reassign, upon written request from the Agency any employee or subcontractor employee that the Agency deems to be unacceptable.

Record-Keeping Requirements

- The Contractor shall make available to the Agency any requested records via a written request and shall deliver such records to the Agency's central office in Albuquerque, New Mexico at no cost to the Agency. The Contractor shall allow the Agency to inspect, audit or copy records at the Contractor's site, without cost to the Agency.

Confidentiality

- The Contractor must establish and implement proper safeguards against the unauthorized use and disclosure of the data produced and exchanged pursuant to the administration of the rebate programs as well as other aspects of the interface between the Agency, CMS, and manufacturers (including but not limited to encryptions). Such safeguards shall include the adoption of policies and procedures to ensure that the data shall be used solely in accordance with program requirements and applicable federal and state law. The Contractor shall establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality, integrity, accessibility, and security of the data and to prevent unauthorized access to the data. The safeguards shall provide a level of security

at least comparable to the level of security required of the Agency by CMS, as specified by CMS. Any and all Contractor personnel interacting with this data must be advised by the Contractor of the confidential nature of the information, the safeguards required to protect the information, and the administrative, civil and criminal penalties for noncompliance contained in the applicable federal laws; and

- Unless expressly authorized in the contract or prior written approval has been received from the Agency, the Contractor is strictly prohibited from releasing to any third party any data received or generated as a result of activities associated with the contract. This includes, but is not limited to, utilization data, invoice amounts, collection amounts, outstanding balance amounts, etc.

Implementation Plan

- The Contractor shall provide an implementation plan, including narrative, diagram, and timeline, to deliver all services by the start date of the contract;
- Upon approval of a contract award by the Office of State Procurement, the Contractor must prepare an implementation plan within fourteen (14) days for Agency approval.

Pharmacy & Therapeutics Committee

The Contractor shall:

- Produce monographs, supplemental rebate negotiations, and savings analysis for each therapeutic class under review by the Committee no later than thirty (30) calendar days prior to each P&T Committee meeting. Such reviews shall include summaries of the relative safety and efficacy of each drug within the therapeutic class and recommendations for the inclusion or exclusion of medications on the PDL within each class and relative cost sheets for each drug within the therapeutic class. Savings estimations shall be coded to protect the confidentiality of rebate information in a format agreed to by the Agency and the Contractor. New drugs or drug indications will be reviewed when appropriate;
- Provide the P&T Committee recommendations report no later than three (3) business days following the meeting. The report shall consist of a listing of preferred drugs and those requiring prior authorization;
- Provide assistance in developing the minutes of the P&T Committee during and following the meeting, which is not limited to record keeping during the meeting and assistance in writing the minutes thirty (30) calendar days or more after the meeting; and
- Provide a report no later than thirty (30) calendar days prior to each P&T Committee meeting with the financial and clinical analysis of P&T recommendations both before and after implementation, including but not limited to projected vs. actual supplemental rebate collections, to be distributed to the P&T Committee members; and 24 Provide any additional reports as necessary in a format agreed upon by the Agency and the Contractor.

Preferred Drug List (PDL) Reports and Documents

- The Contractor shall: Present cost sheet documents (in written format and orally) to the Agency at least thirty (30) calendar days prior to the P&T meeting date;
- Provide to the Agency all relevant documentation and data necessary to allow the Agency's P&T Committee to conduct a minimum of forty (40) therapeutic class reviews per calendar year during four or more P&T Committee meetings as requested by the Agency;
- Review new medications in therapeutic classes affected by the PDL as these new medications are approved by the FDA;

- Provide electronic files containing updates for the PDL to the Agency within five (5) working days after the Agency's approval of the PDL. Such files will be in a format agreed upon by the involved parties and shall include drug information to the NDC level; and
- Provide a progress report which includes meetings, classes reviewed, contracts with pharmaceutical manufacturers, etc. with accompanying timelines; and Provide assistance to the State in developing a single state PDL if requested by the Agency, including but not limited to manually/electronically updating the PDL list within fifteen (15) calendar days or less after the P&T meeting.

Supplemental Rebates Reports and Documents

The Contractor shall:

- Produce a Monthly Contract Status Report showing the status of the State Supplemental Rebate Agreements with each manufacturer along with the manufacturer code, document and date no later than fifteen (15) calendar days after the end of each calendar month;
- Produce and facilitate the signing of supplemental rebate contracts with pharmaceutical manufacturers in a format agreed to by the Agency and CMS. These contracts will be forwarded to the Agency;
- Provide quarterly reports no later than thirty (30) days after the end of the quarter and include information in the annual report that details the compliance of Medicaid providers with the PDL;
- Track the effective dates of all Supplemental Rebate Agreements and provide the Agency Billing File Report, which includes manufacturer, labeler codes and names, national drug code (NDC), status, Original (O)/Amendment (A), value, calculation, start and end dates, price, document number and tier no later than fifteen (15) calendar days after the end of each calendar month; Produce a monthly Contract Status Report which includes manufacturer, number, document, status, start date, end date, and products no later than fifteen (15) calendar days after the end of each calendar month;
- Produce an analysis of savings realized by the Pharmacy program as a result of the implementation of the PDL, in a format agreed to by the Agency and the Contractor. The report shall detail the impact of the supplemental rebates on the Medicaid Pharmacy Benefits Management program in cost avoidance, supplemental rebate amounts, utilization variances and other agreed upon data within thirty (30) calendar days after receipt of the utilization data by the Agency; and
- Provide any additional reports as necessary in a format agreed upon by the Agency and the Contractor; and Provide assurances that the Agency's Supplemental Rebate Agreements are kept confidential and held separately from its other clients.

Supplemental Rebate Administration Reports and Documents

As related to supplemental rebates, the contractor shall:

- In collaboration with the Agency's contractors/vendors, provide the supplemental unit rebate amounts (SURA) data in an Agency approved text file format;
- Provide the necessary documentation to the Agency to support the supplemental rebate billings along with amounts to submit to the manufacturers at the NDC level in a format as specified by the Agency and the supplemental rebate agreements;
- Provide a quarterly report listing all NDCs with zero (0) SURAs; Provide an electronic file containing calculated SURA to the Agency within ten (10) calendar days after receipt of the CMS National Rebate file. The parties will agree upon the format for submission of each SURA data; and

- Submit a written report detailing the status of any disputes regarding SURA with each manufacturer no later than fifteen (15) days after the end of each month during the term of the contract.

Annual Analysis and Recommendation Report

- The Contractor shall annually submit a draft report for the State Supplemental Rebate/PDL program to the Agency for review by January 15th and final report by February 15th .

Transition Plan

- The Transition Plan shall be due within thirty (30) calendar days of contract execution. Sixty (60) calendar days prior to contract termination, or upon the Agency request, an updated Transition Plan shall be submitted to the Agency for approval. The plan should include, but not be limited to the following: 1) Supplemental Rebate Information, 2) P&T Committee Meeting related information, 3) PDL, 4) Invoicing Information, and 5) Savings. The Transition Plan shall be due within thirty (30) days after contract start date. The Agency shall have autonomy over its PDL.

Drug Rebate Processing (DRP)

Labeler Data

As related to supplemental rebates, the contractor shall:

- Maintain a list of active and terminated labelers and provide reports as necessary;
- Maintain a history of a labeler's active and termination dates, including labelers that have more than one active period and provide reports as necessary;
- Maintain a record of all labeler information provided by CMS, including but not limited to labeler contacts and addresses; and provide reports as necessary; and
- Report updates in labeler status (i.e. new labelers, terminated labelers) to the Agency's Fiscal Intermediary no less than once per quarter.

Pricing Data

As related to supplemental rebates, the contractor shall:

- Use quarterly URA data to update product termination dates;
- Use quarterly URA, UROA, and SURA data to generate both current quarter invoices and prior quarter adjustments;
- Use prior period rate adjustments must be applied regardless of the payment status; and
- Use prior period rate or unit adjustments that result in a balance owed to the State or credit due to the labeler must be communicated to the labeler on a quarterly basis.

Drug Compendia Data

- The Contractor shall establish and maintain a system and database that has the capacity to utilize data from a national drug compendia to validate claims data, inform conversion factors, and carry out other functions necessary for the generation and validation of invoices required under the contract. If the Contractor elects to interface with the Agency and the Agency's contractors, including the Fiscal Intermediary, to obtain this data, it has the capacity required under the contract.

Managing Utilization Data

As related to supplemental rebates, the contractor shall:

- Maintain a table of NDCs for non-rebateable products including immunizations, certain diabetic supplies, etc.;
- Maintain a table of 340B covered entities that carve in Medicaid per the Medicaid Exclusion File (MEF) published quarterly by HRSA. The methodology for review of the

MEF and the decision-making process regarding which providers to include in this table are subject to Agency review and approval;

- Interface with the Agency and any contractor(s)/vendor(s) of the Agency, including the Fiscal Intermediary and PBA, to receive utilization data, including FFS claims and MCO encounters, on a schedule to be agreed upon by the Agency and the Contractor;
- Submit a detailed plan of variance analyses to be performed and the frequency of each, to be approved by the Agency within thirty (30) days from the execution of the contract. The Contractor must immediately report to the Agency any data inconsistencies or concerns regarding data quality;
- Perform variance analysis reports and any action taken as a result shall be maintained by the Contractor as part of the record-keeping requirements of this RFP; and
- Identify and exclude the following claims from drug rebate invoice calculations:
 - Claims from 340B covered entities who carve in Medicaid per the HRSA Medicaid Exclusion File, in accordance with the Agency's policy regarding 340B covered entity Medicaid billing;
 - FFS claims where the Medicaid paid amount is zero;
 - Claims for drugs dispensed or administered in an inpatient setting; and
 - Any other claims that are deemed not rebate-eligible per federal and/or state guidelines.

Invoice Pre-Processing, Generation, and Quality Assurance

As related to supplemental rebates, the contractor shall

- Maintain a crosswalk from NDC to PAD Healthcare Common Procedure Coding System (HCPCS - often referred to as "J codes") whereby only appropriate NDCs are linked to a HCPCS with an appropriate conversion factor;
- Have procedures in place to invoice PAD claims where no NDC is submitted on the claim and the submitted HCPCS code is for a single-source drug;
- Maintain a table of conversion factors to convert NCPDP drug billing units to CMS invoice units;
- Prior to sending invoices, the Contractor must carry out a number of variance analyses and quality assurance checks to determine whether invoice unit quantities and/or amounts are accurate;
- Submit a detailed plan of variance analyses and quality assurance checks to be performed and the frequency of each, to be approved by the Agency within thirty (30) days from the execution of the contract;
- Immediately report to the Agency any data inconsistencies or concerns regarding data quality;
- Variance analysis reports and any action taken as a result shall be maintained by the Contractor as part of the record-keeping requirements of this RFP;
- Produce invoices in a manner that allows for the tracking and allocation of invoiced and collected amounts for the following program types, at a minimum:
 - FFS Pharmacy, Supplemental, Non-Expansion;
 - MCO Pharmacy, Supplemental, Non-Expansion;
 - FFS Pharmacy, Supplemental, Expansion;
 - MCO Pharmacy, Supplemental, Expansion;
- The Contractor shall obtain URA, UROA, and labeler data required for invoice generation on or about the fifth (5th) day of each invoicing month. This data may be obtained either

directly from CMS' Drug Data Reporting (DDR) system or through interfaces with the Agency or contractor(s) of the Agency;

- The Contractor shall produce and distribute one hundred percent (100%) of drug rebate invoices for federal programs within sixty (60) calendar days after the end of each quarterly rebate period;
- Federal drug rebate program paper invoices and electronic invoices shall have a postmark or transmission date within sixty (60) days of the end of each quarter, in accordance with all applicable CMS guidelines; and
- Produce and distribute one hundred percent (100%) of rebate invoices for supplemental programs as follows:
 - Supplemental rebate paper invoices and electronic invoices shall have a postmark or transmission date on or before the dates specified in the table below. Postmark and transmission dates shall be defined in accordance with CMS guidance and definitions for the federal rebate programs.

Calendar Year Quarter	Supplemental Invoice Due Date
Q1 (Jan-Mar)	Jun 15
Q2 (Apr-Jun)	Sep 15
Q3 (Jul-Sep)	Dec 15
Q4 (Oct-Dec)	Mar 1

- - Produce and distribute invoices on an expedited schedule as requested by the Agency. Such requests typically occur annually for the quarter two (2) invoicing cycle.

Rebate Invoice Accuracy

As related to supplemental rebates, the contractor shall

- Have in place systematic safeguards to prevent invoicing a manufacturer for a negative unit quantity;
- be held liable for the actual amount of all contractor-caused miscalculations, failure to address past due accounts receivables adequately, and incorrectly invoicing rebates; and
- Within two (2) business days, notify in writing appropriate Agency staff when a data or data quality issue has been discovered by itself or a third party, describing the nature of the defect and the fields, tables, and data elements impacted and the extent of the errors, including monetary estimates. A corrective action plan shall be submitted within seven (7) calendar days for approval by the Agency.

Dispute Resolution

As related to supplemental rebates, the contractor shall

- Adjust invoiced units, at the claim level to the greatest extent possible, to account for billing or other errors;
- Independently resolve disputes in accordance with write-off thresholds and dispute resolution procedures;
- Provide manufacturers or their designated agent(s) access to materials and/or data needed to support rebate payments, including but not limited to: invoice copies, claim-level detail, and prior communications within two (2) business days of the request;
- Provide claim-level detail data to labelers within two (2) business days of the request by the State or labeler;
- Resolve ninety percent (90%) of all disputes within three (3) months of receipt, and one hundred percent (100%) of all disputes within six (6) months of receipt;

- In the event that a dispute cannot be resolved within six (6) months, the Contractor shall issue a report to the Agency containing the number of units and associated dollars in dispute, the reason for the dispute, a description of all relevant communications and good faith efforts made to resolve the dispute with the labeler, and the reason the dispute remains unresolved; and
- The Agency reserves the right to conduct final review and approval and make the final determination on course of action on any and all disputes. The Contractor shall comply with all Agency decisions regarding course of action for dispute resolution.

Labeler Non-Payment and Aged Balances

As related to supplemental rebates, the contractor shall

- Send written delinquency notices to labelers with unpaid invoices on a schedule not less frequent than outlined below;
- The first delinquency notice shall have a postmark or transmission date no later than the date listed below or, if the date listed is a weekend, holiday, or other non-business day, the postmark or transmission date shall be no later than the business day immediately preceding the date listed:

Invoice Quarter	Delinquency Notice Date – Federal Programs	Delinquency Notice Date – Supplemental Programs
Q1 (Jan – Mar)	July 15	July 30
Q2 (Apr-Jun)	October 15	October 30
Q3 (Jul-Sep)	January 15	January 30
Q4 (Oct-Dec)	April 15	April 30

- The second delinquency notice shall have a postmark or transmission date no later than the date listed below or, if the date listed is a weekend, holiday, or other non-business day, the postmark or transmission date shall be no later than the business day immediately preceding the date listed:

Invoice Quarter	Delinquency Notice Date – Federal Programs	Delinquency Notice Date – Supplemental Programs
Q1 (Jan – Mar)	August 15	August 30
Q2 (Apr-Jun)	November 15	November 30
Q3 (Jul-Sep)	February 15	February 30
Q4 (Oct-Dec)	May 15	May 30

- The Contractor shall submit, for Agency approval, a plan for the collection of aged balances. The Contractor shall periodically report on aged balance collections in a format and frequency to be approved by the Agency.

Drug Rebate Payments, Reconciliations, and Accounts Receivable Processes

As related to supplemental rebates, the contractor shall

- On a daily basis, the Contractor shall download and reconcile deposit information from the State's contracted banking provider:
 - Ninety-five percent (95%) of payments shall be reconciled within three (3) business days of receipt; and

- One hundred percent (100%) of payments shall be reconciled within seven (7) business days of receipt.
- The Contractor shall maintain, at a minimum, the following rates of accounts receivable collection:
 - Ninety percent (90%) of invoiced amounts shall be collected within sixty (60) days of invoice mailing or transmission;
 - Ninety-five percent (95%) of invoiced amounts shall be collected within one-hundred eighty (180) days of invoice mailing or transmission;
 - Every effort shall be made to collect one hundred percent (100%) of invoiced amounts within one-hundred eighty (180) days of invoice mailing or transmission;
- The Contractor shall reconcile payments and remit payment posting reports to the Agency within one (1) business day after the close of each calendar month for deposits made within the month; and
- The Contractor shall ensure that the Agency Fiscal section is provided with any necessary information needed to close out the fiscal year prior to the deadline established by Fiscal.

Drug Rebate Processing Reports and Documents

- Recurring reports shall include, but not be limited to, the following. Report content and formatting shall be mutually established and agreed upon by the Agency and the Contractor:
 - Quarterly accounts receivable reporting shall be submitted by April 30, July 30, October 30, and January 30 for the quarter immediately preceding the due date;
 - Quarterly dispute resolution activities and resolutions shall be submitted by April 30, July 30, October 30, and January 30 for the quarter immediately preceding the due date;
 - Quarterly reports containing information needed for submission of CMS-64 data shall be submitted by April 30, July 30, October 30, and January 30 for the quarter immediately preceding the due date;
 - Monthly reports outlining the activities, progress, and challenges of the drug rebate program shall be submitted within fifteen (15) calendar days of the end of each month; and
 - Quarterly reports of pharmacies who are 340B covered entities shall reflect updates from the most recent MEF and must be provided no later than the twenty-fifth (25th) day of the month preceding the beginning of each calendar quarter;
- If a Contractor error is discovered either by the Contractor or the Agency, the Contractor shall correct the error(s) and submit accurate reports within ten (10) calendar days from the date of discovery by the Contractor or date of written notification by the Agency (whichever is earlier):
 - Due to the potential for cash flow impacts and federally-mandated reporting, the Agency may, at its discretion, decrease the timeframe in which the Contractor is required to correct the error(s) and submit accurate reports; and
 - The Agency may, at its discretion, extend the due date if an acceptable corrective action plan has been submitted and the Contractor can demonstrate to the Agency's satisfaction that the problem cannot be corrected within ten (10) calendar days;
- Failure of the Contractor to respond within the above specified timeframes may result in a loss of any money due to the Contractor.

Report Submission Timeframes

As related to supplemental rebates, the contractor shall

- The Contractor shall ensure that all required reports or files, as specified by the Agency, are submitted in a timely manner for review and approval by the Agency. The Contractor's failure to submit the reports or files as specified may result in the assessment of liquidated damages;
- Unless otherwise specified, deadlines for submitting files and reports are as follows:
 - Daily reports and files shall be submitted within one (1) business day of the due date;
 - Weekly reports and files shall be submitted no later than the Wednesday following the reporting week;
 - Monthly reports and files shall be submitted within fifteen (15) calendar days of the end of each month;
 - Quarterly reports and files shall be submitted by April 30, July 30, October 30, and January 30 for the quarter immediately preceding the due date; and
 - Annual reports and files shall be submitted within thirty (30) calendar days following the twelfth (12th) month.

Drug Rebate Processing Administration

As related to supplemental rebates, the contractor shall

- The Contractor shall provide sufficient full-time staff to facilitate the Supplemental Drug Rebate Program;
- In addition to the staffing requirements in section the following functionality shall be incorporated:
 - Key staff roles may include:
 - Project Director;
 - Quality Assurance/Internal Auditor;
 - Rebate Manager;
 - Financial Analyst; and/or
 - Systems Liaison/Business Analyst.
 - Final determination of key staff positions and roles shall be mutually agreed upon by the Contractor and the Agency;
 - The Contractor shall provide the name, resume, and references for all key staff;
 - All key staff positions filled should be one hundred percent (100%) dedicated to New Mexico; and
 - The Contractor shall inform the Agency in writing within seven (7) days, when an employee leaves one of the key staff positions. The vacancy shall be filled within thirty (30) days. Staff assignments shall be fully covered at all times. The name of the interim contact person should be included with the notification. The name and resume of the permanent employee should be submitted as soon as the new hire has taken place. The Agency reserves the right to approve the person(s) filling the key staff positions.
- The Contractor shall make every effort to respond to ninety-eight percent (98%) or more of all written correspondence within five (5) business days;
- The Contractor shall maintain a New Mexico-specific dedicated email address to receive and respond to inquiries; and
- The Contractor shall keep informed and up-to-date on Medicaid and other state rebate programs in order to stay abreast of rebate policies and regulations, and make suggestions to the State as necessary to ensure compliance with such policies and regulations.

Annual Analysis and Recommendation Report

- The Contractor shall annually submit a draft report for the Drug Rebate Processing program to the Agency for review by January 15th and final report by February 15th .

Transition Plan

The Contractor must:

- Submit the Transition Plan within thirty (30) calendar days of contract execution. Sixty (60) calendar days prior to contract termination, or upon the Agency request, an updated Transition Plan shall be submitted to the Agency for approval;
- This plan must include a detailed breakdown of processing steps performed, staffing, equipment, facilities, supply consumption, workloads, standard procedures and any additional information that the Agency, at its sole discretion feels is necessary to effect a smooth transition to the successor Contractor. The Transition Plan must include invoicing information;
- Provide training to successor Contractor's management in the use, operation and maintenance of computer programs, policies and procedures. The training will utilize current and complete documentation, instruction materials and handbooks. All training materials will be based on the complete and current documentation. Training will be provided for key successor contractor personnel as deemed necessary by the Agency;
- Perform a comprehensive assessment of all documentation. This documentation assessment will be completed and delivered to the Agency annually with a final comprehensive assessment completed before the end of the contract term on a date determined by the Agency. The purpose of the review will be to assess whether the documentation accurately and completely reflects existing Agency procedures, and meets all documentation requirements. The Contractor will update any documentation which is not accurate, complete and in accordance with these requirements annually with a final comprehensive assessment completed prior to the end of the contract term on a date determined by the Agency;
- Transfer the Contractor's records and associated records to the successor contractor or to the Agency. This transfer will be conducted in order to prevent any interruption in the delivery of record retention services, including custodianship, preparation of copies, access, retrieval and certification while the transfer is executed. The transfer will be completed within ten (10) calendar days after receiving a request from the Agency;
- Transfer all software, files, programs, source code and documentation in an electronic format to the successor within ten (10) calendar days of receiving a request from the Agency; and
- The transition/takeover plan must be adhered to within thirty (30) days of written notification of contract termination, unless other appropriate time frames have been mutually agreed upon by both the Contractor and the Agency.

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 PDL and supplemental rebates. All PDL and supplemental rebates provided to private sector will also be considered;
- b) provide a detailed/brief resume/bio of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel is identified as <insert definition here>. Offeror must include key personnel education, work experience, relevant/applicable certifications/licenses, and <insert other criteria here>.
- c) describe at least two project successes and failures of a PDL and supplemental rebates > engagement. Include how each experience improved the Offeror's services.

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) Technical environment (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);
- e) Staff assigned to reference engagement that will be designated for work per this RFP; and
- f) 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

- The offeror must describe any and all multi-state purchasing pools in which the Contractor participates or administers, including proposed options for MAD and why said option is beneficial for MAD
- The offeror must be able to work with MAD's Medicaid Drug Rebate vendor to effectively process supplemental rebates.
- The offeror must have a way to report applicable data to the state's system integrator
- The offeror shall have in place the organizational, operational, managerial and administrative expertise to complete the scope of work.
- The offeror shall procure, equip, furnish, operate and maintain facilities appropriate to support the requirements of this RFP capacity to be capable of fulfilling all contract requirements outlined in this RFP
- The offeror must employ sufficient staffing and utilize appropriate resources to achieve contractual compliance. The offeror's resource allocation must be adequate to achieve outcomes in all functional areas within the organization. Adequacy will be evaluated based on outcomes and compliance with contractual and MAD policy requirements, including the requirement for providing culturally competent services;
- The offerors shall develop and maintain adequate fully trained staff to respond to all stakeholder inquiries while protecting confidentiality and maintaining the security and integrity of all systems. Staff must be trained to understand and observe requirements related to confidentiality and operating guidelines for functions included in this RFP
- The Contractor must maintain full confidentiality of all drug rebate pricing data, including Unit Rebate Amount (URA), Unit Rebate Offset Amount (UROA), Supplemental Unit Rebate Amount (SURA) data, and any multi-state or MAD specific value or outcome-based rebate contract provisions in accordance with state and federal guidelines.
- The Contractor must maintain up-to-date procedures to ensure timely and accurate responses while ensuring confidentiality of information

4. Desirable Specification

Experience in managing high-cost medications for state agencies.
Expertise in developing innovative and high-value solutions managing therapeutic conditions and drug utilization.

C. BUSINESS SPECIFICATIONS

1. Financial Stability

Offerors are required to provide a D&B Comprehensive Insight Plus credit report or Experian ProfilePlus report, indicating the Offeror's current credit score, at the time of Best and Final Offer. Offeror should stamp or write "Trade Secret" or "Confidential" on each page of the Credit Report information that it does not want released. The information will be held in confidence to the extent that law allows. Credit Report must be current and have been established within thirty (30) calendar days of proposal closing date.

Credit Reports must be for the exact organization submitting the proposal. The Credit Report cannot be combined or consolidated with the information from any entity other than the company submitting the proposal. If Offeror's name on the proposal does not match the name on the credit report, it will not be accepted and Offeror will be found non-responsive for the financial stability requirement of this proposal.

2. Performance Surety Bond

Not Applicable.

3. 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.**

4. 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.**

5. Suspension and Debarment Form

The Offeror must complete an unaltered Suspension and Debarment Form and submit a signed copy with the Offeror's proposal. (See Appendix G)

6. Oral Presentation

If oral presentations are held, finalist Offeror(s) may be required to explain, demonstrate, detail, and/or clarify any aspect of its submitted proposal, to which the Evaluation Committee may ask questions and/or seek clarifications. Pursuant to Section II.B.9, Oral Presentations may be held at the sole discretion of the Evaluation Committee.

7. 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 Random Moment Surveys, Administrative Claiming & Direct Medical Service Cost Reporting & Settlement. All charges listed on Appendix D must be justified and evidence of need documented in the proposal.

8. 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. See §13-1-21(J) NMSA 1978

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 (650 Total Points)	
B. 1. Organizational Experience (200 points)	
• Experience in other states	50
• Medicaid knowledge and expertise	100
• Staffing Capacity	50
B. 2. Organizational References	50
B. 3. Mandatory Specification (400 points)	
• Preliminary work plan for P&T, PDL, and supplemental rebates	100
• Clinical knowledge and expertise for P&T	75
• Strategy for alignment and stakeholder engagement	75

• Knowledge & expertise in rebate negotiations and implementation	100
• Reporting capabilities	50
B. 4. Desirable Specifications	Pass/Fail
C. Business Specifications (350 Total Points)	
C. 1. Financial Stability	Pass/Fail
C. 2. Suspension and Debarment Form	Pass/Fail
C. 3. Letter Of Transmittal	Pass/Fail
C. 4. Campaign Contribution Disclosure Form	Pass/Fail
C. 5. Oral Presentations	50
C. 6. Cost	300
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 1/3 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

Criteria: Provides thorough documentation that mandatory specifications are met. See Section IV B.3.

4. B.4 Desirable Specifications

Criteria: Provides thorough documentation that desirable specifications are met. See Section IV B.4. Evaluation Factor: Pass/Fail only. No points assigned

5. C.1 Financial Stability (See Table 1)

The mandatory elements of this Section are two-fold: Offeror must provide a credit score on one of the named reports AND the report provided in response to the RFP must demonstrate a D&B Credit Score Class (CSC) rating of 1 – 3 or an Experian Credit Ranking Score (CRS) rating of 26 – 100.

Failure to provide one of the named reports (or failure to provide one of the designated credit scores) will result in a finding that the offeror is non-responsive.

Evaluation Factor:

Pass/Fail only. No points assigned

For Offerors providing the D&B Comprehensive Insight Plus report, Offerors receiving a CSC rating of 1-3 will receive a Pass score and an Offeror receiving a CSC rating of 4-5 will receive a Fail score. For Offerors providing an Experian ProfilePlus report, a CRS rating of 26-100 will receive a Pass score and an Offeror receiving a CRS rating of 0-25 will receive a Fail score.

6. C.2 Suspension and Debarment (See Table 1)

Pass/Fail only. No points assigned.

7. C.3 Letter of Transmittal (See Table 1)

Pass/Fail only. No points assigned.

8. C.4 Campaign Contribution Disclosure Form (See Table 1)

Pass/Fail only. No points assigned.

9. C.5 Oral Presentation (See Table 1)

Points will be awarded based on the quality, organization and effectiveness of communication of the information presented, as well as the professionalism of the presenters and technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror a presentation agenda.

10.C.6 Cost (See Table 1)

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

$$\frac{\text{Lowest Responsive Offeror's Cost}}{\text{Each Offeror's Cost}} \times \text{Available Award Points}$$

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.6.
3. The Evaluation Committee may use other sources 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. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

APPENDIX A
REQUEST FOR PROPOSAL
CREATION AND MAINTENANCE OF A PREFERRED DRUG
LIST AND SUPPLEMENTAL REBATE PROGRAM
RFP# 26-630-8000-0002

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:

Robert B. Kenney

E-mail: RobertB.Kenney@hca.nm.gov

Subject Line:

RFP# 26-630-8000-0002 PDL AND SUPPLEMENTAL REBATE PROGRAM

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: New Mexico Governor Michelle Lujan-Grisham and 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 HEALTH CARE AUTHORITY PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Health Care Authority**, hereinafter referred to as the “HCA,” and **XXXXXX**, hereinafter referred to as the “Contractor”, and is effective as of the date set forth below upon which it is executed by the State Purchasing Division (SPD) Contracts Review Bureau (CRB).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

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

2. Compensation.

A. The HCA shall pay to the Contractor in full payment for services satisfactorily performed, such compensation not to exceed XXXXXXXXXXXXXXXXXXXX that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the 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 by approval of the CRB. All invoices MUST BE received by the 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 the HCA finds that the services are not acceptable, within thirty (30) days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HCA that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) days after the date of acceptance. If payment is made by mail, the payment shall be deemed

tendered on the date it is postmarked. However, the 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 CRB. This Agreement shall terminate on **XXXX**, unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

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

B. Notice; HCA Opportunity to Cure.

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

2. Contractor shall give HCA written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HCA's material breaches of this Agreement upon which the termination is based and (ii) state what they must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the 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, the 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 the 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, the 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 THE 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 the 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 the HCA; 2) comply with all directives issued by the HCA in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the HCA shall direct for the protection, preservation, retention or transfer of all property titled to the 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 the HCA upon termination and shall be submitted to the 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 the HCA to the Contractor. The HCA's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the 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 the 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 the 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 the 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 HCA.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the 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 the 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 the 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 it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

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

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

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

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

13. Amendment.

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

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

15. Penalties for Violation of Law.

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

16. Equal Opportunity Compliance.

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

17. Applicable Law.

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

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the 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 five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the 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 the 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 the HCA: XXXXXXXXXX

To the Contractor: XXXXXXXXXX

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:

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

occurring in the workplace;

- a) Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);
 - b) Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this PSC, the employee will:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;
 - c) Notify the 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:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- 3) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

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

D. In addition to other remedies available to the 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. Performance.

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees, as applicable, with the following requirements:

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

B. Contractor agrees if Personally Identifiable Information (PII) as defined by the National Institute of Standards of Technology, limited to PII received from, or created on behalf of, HCA by Contractor pursuant to the Services; referred to as Confidential Information in Article 21 of this Agreement, made available to Contractor, shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or subcontractor of the Contractor is prohibited.

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

D. The Contractor certifies that the PII processed during the performance of this Agreement will be purged from all electronic data storage components in Contractor's facilities, including paper files, recordings, video, written records, printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed or when this Contract is terminated. If immediate purging of all electronic data storage components is not possible, the Contractor certifies that any PII remaining in any storage component will be safeguarded to prevent unauthorized disclosures beyond the term of this Agreement as long as Contractor is in possession of such PII.

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

F. All of Contractor's systems receiving, processing, storing, or transmitting PII must meet the requirements defined in relevant federal regulations that apply to this contract. To meet functional and assurance requirements, the security features of the Contractor's environment must provide for security across relevant managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to PII.

G. The HCA will have the right to terminate the contract if the Contractor and his or her employees fail to provide the safeguards described above, consistent with the termination clause herein.

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

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

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

K. HCA Personally Identifiable Information (PII) cannot be accessed by HCA employees, agents, representatives, or contractors located offshore, outside of the United States territories, embassies, or military installations. Further, HCA PII may not be received, processed, stored, transmitted, or disposed of by information technology (IT) systems located offshore.

31. Criminal/Civil Sanctions.

A. It is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C.552a(i)(1), which is made applicable to contractors by 5 U.S.C.552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to HCA records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully disclose the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

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

Contractors must maintain their authorization to access PII through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review.

32. Inspection.

The HCA shall have the right, with 24 hour notice, to send its inspectors into the offices and plants of the Contractor to inspect the facilities and operations provided for the performance of any work related to PII under this Agreement. On the basis of such inspection specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

33. Contractor's Responsibility For Compliance With Laws And Regulations.

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

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

34. Contractor's Responsibility For Compliance With Laws And Regulations Relating to Information Technology.

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

1. The Federal Information Security Management Act of 2002 (FISMA);
2. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
3. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

35. Authority.

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

The remainder of this page intentionally left blank.

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

By: _____ Date: _____
HCA Cabinet Secretary

By: _____ Date: _____
HCA Chief Financial Officer

Approved for legal sufficiency:

By: _____ Date: _____
HCA General Counsel

By: _____ Date: _____
Contractor

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

BTIN ID Number: XXXXXXXXXXXX

By: _____ Date: _____
Tax and Revenue Department Representative

This Agreement has been approved by the State Purchasing Division:

By: _____ Date: _____
State Purchasing Division/Contracts Review Bureau

SCOPE OF WORK
EXHIBIT A

The Agreement included in this Appendix C represents the **contract/price agreement** the Agency intends to use to make **an award**. The State of New Mexico and the Agency reserve the right to modify the Agreement prior to, or during, the award process, as necessary.

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.

FIRM NAME:	
SIGNATURE:	DATE:

APPENDIX E

LETTER OF TRANSMITTAL FORM

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#: 26-630-8000-0002

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: Robert B. Kenney at RobertB.Kenney@hca.nm.gov by May 5, 2025 5 pm 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 # 26-630-8000-0002
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: Robert B. Kenney
Email: RobertB.Kenney@hca.nm.gov

Forms must be submitted no later than May 5, 2025 5 pm 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 505-469-2822, or RobertB.Kenney@hca.nm.gov. 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)	
Technical environment for the project your providing a reference (i.e., Software applications, Internet capabilities, Data communications, Network, Hardware);	

QUESTIONS:

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

COMMENTS:

2. How would you rate this firm's knowledge and expertise?

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

COMMENTS:

3. How would you rate the vendor's flexibility relative to changes in the project scope and timelines?

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

COMMENTS:

4. What is your level of satisfaction with materials produced by the vendor?

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

COMMENTS:

5. How would you rate the dynamics/interaction between vendor personnel and your staff?

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

COMMENTS:

6. Who are/were the vendor's principal representatives involved in your project and how would you rate them individually? Would you, please, comment on the skills, knowledge, behaviors or other factors on which you based the rating?

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

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

Name: _____ Rating: _____

COMMENTS:

7. How satisfied are/were you with the products developed by the vendor?

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

COMMENTS:

8. With which aspect(s) of this vendor's services are/were you most satisfied?

COMMENTS:

9. With which aspect(s) of this vendor's services are/were you least satisfied?

COMMENTS:

10. Would you recommend this vendor's services to your organization again?

COMMENTS:

APPENDIX G

SUSPENSION AND DEBARMENT REQUIREMENT

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

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

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

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

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

A. The Offeror and/or any of its Principals (check applicable blocks):

Status	Yes	No
Are presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency.		
Have, within a three-year period preceding the date of the Offeror's proposal, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.		
Are presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with, commission of any of the offenses enumerated in paragraph A. (2) of this certification.		
Have, within a three-year period preceding the date of Offeror's proposal, had one or more public agreements or transactions (federal, state or local) terminated for cause or default.		
Have been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.		

- B. "Principal," for the purposes of this certification, shall have the meaning set forth in 45 C.F.R. § 76.995 and shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with federal funds, who: is in a position to handle federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.
- C. For the purposes of this certification, the terms used in the certification, such as covered transaction, debarred, excluded, exclusion, ineligible, ineligibility, participant, and person have the meanings set forth in the definitions and coverage rules of 45 C.F.R. Part 76.
- D. Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph A. of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

OFFEROR:	
SIGNATURE/TITLE:	DATE: