



NEW MEXICO HEALTH INSURANCE EXCHANGE

Professional Legal Services

REQUEST FOR PROPOSALS
RFP# 06 - 2013-0010

Issue Date: June 10, 2013

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I. INTRODUCTION

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The purpose of this Request for Proposals (RFP) is to procure an Offeror or Offerors (hereafter referred to simply as “Offeror”) to provide legal services to the New Mexico Health Insurance Exchange (“HIX”) and the New Mexico Health Insurance Alliance (“HIA”). The selected Offeror will be responsible interpretation of federal and state statutes and appropriate representation in administrative and judicial proceedings regarding the HIX program and its operations. Legal representation may include advice and counsel on New Mexico Division of Insurance, federal and state Medicaid statutes and regulations, assistance and advocacy in HIX dealings with the Centers for Medicare & Medicaid Services (“CMS”), Center for Consumer Information and Insurance Oversight (CCIIO) and other federal agencies, contract negotiations, and legal guidance on implementation of Patient Protection and Affordable Care Act (PPACA). This includes representing the HIX’s interest in federal and state lawsuits, federal audits and evaluations, and any legal matters regarding the HIX Program. Qualified bidders must have extensive experience in Health Insurance, Managed Care and PPACA. A license to practice law in New Mexico is required. Legal malpractice insurance is required and must be demonstrated through written documentation.

HIX reserves the right to cancel this RFP, to reject any and all proposals, and to negotiate with the selected provider prior to entering into any written agreement. An accepted proposal becomes the basis for a written agreement, but is subject to negotiation prior to being finalized.

The electronic version of this document is available for download from the HIX website at <http://www.nmhia.com/NMHIX>.

B. SUMMARY SCOPE OF WORK

The scope of work includes but is not limited to the provision of legal services to HIX and HIA including legal research, analysis, advice, contract negotiation, general representation and litigation. The selected Offeror will be responsible for the provision of legal representation concerning the HIX implementation and operations.

C. SCOPE OF PROCUREMENT

Following award to a successful Offeror, a written contract shall be executed between the Offeror and the HIX. The contract shall begin upon the date it is fully executed by an authorized representative of the HIX. It is the intent of the HIX that the contract shall be for an initial term of one year, with an option for four one-year renewals or any portion thereof.

D. OFFEROR QUALIFICATIONS/CONFLICT OF INTEREST

This RFP is open to an Offeror capable of performing the work described in the scope of work (Section I. B.) and meeting the mandatory specifications in Section IV. A.), Mandatory Specifications, subject to the following stipulations:

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

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

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

The burden is on the Offeror to present sufficient assurance to, and as determined by, the HIX that the award of the contract to the Offeror shall not create a conflict of interest.

Offerors should fully disclose whether the Offeror is able to perform the work solely or will require the assistance of contractors, sub-contractors, or other staff not directly employed by the Offeror. If contractors, sub-contractors, or other staff not directly employed by the Offeror is needed, the Offeror should include a detailed description of the qualifications of the additional staff, all costs associated with use of additional staff, and a plan for the work flow, supervision, and points of contact for questions or assistance.

E. PROCUREMENT MANAGER

HIX has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below. Please use this address and email for hand deliveries or express mail.

Mike Nunez
Procurement Manager
New Mexico Health Insurance Exchange
506 Agua Fria Street
Santa Fe, New Mexico 87501
Phone: 505-989-1600 Ext 1012
Fax: 505-988-3461
Email: mnunez@nmhia.com

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

F. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document.

“HIX” means the New Mexico Health Insurance Exchange.

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

“CMS” means the Centers for Medicare and Medicaid Services which is part of the Federal Health and Human Services Department.

“CCIIO” means Center for Consumer Information and Insurance Oversight.

“Contract” means a written agreement for the procurement of items of tangible personal property or services.

“Contractor” means a successful Offeror who enters into a binding contract.

“Day” means business day unless otherwise specified.

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

“Determination” means the written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.

“Desirable” The terms “may”, “can”, “should”, “preferably”, or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).

“Evaluation Committee” means a body appointed by the HIX to perform the evaluation of Offeror proposals.

“Evaluation Committee Report” means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the HIX board for contract award. It contains all written determinations resulting from the procurement.

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

“Mandatory” The terms “must”, “shall”, “will”, “is required”, or “are required”, identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.

“Medicaid” means the state medical assistance program in New Mexico operated by the Department through the Medical Assistance Division as authorized by the New Mexico Public Assistance Act and in compliance with the federal Social Security Act.

“New Mexico Employee” means any resident of the State of New Mexico, performing the

majority of their work within the State of New Mexico, for any employer regardless of the location of the employer's office or offices.

"NMHIA" or "HIA" means the New Mexico Health Insurance Alliance.

"Offeror" is any person, corporation, or partnership who chooses to submit a proposal.

"PPACA" means the Patient Protection and Affordable Care Act.

"Procurement Manager" means the person or designee authorized by HIX to manage or administer a procurement requiring the evaluation of competitive sealed proposals.

"Project Manager" means the person designated by the HIX to manage the contractor work effort.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

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

"Responsive Offer" or "Responsive Proposal" means an offer or proposal which conforms in all material respects to the requirements set forth in the RFP. Material respects of an RFP include, but are not limited to, price, quality, quantity or delivery requirements.

"State (the State)" means the State of New Mexico.

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

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

G. GENERAL INFORMATION

The mission of HIX is to improve access to health insurance for small business and individuals. HIX is a new entity created by the legislature to implement and administer the operations of the New Mexico Health Insurance Exchange.

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS

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

<u>Action</u>	<u>Responsibility</u>	<u>Date</u>
1. Issuance of RFP	HIX	06/10/13
2. Submission of Proposal	Offerors	06/18/13
3. Proposal Evaluation	Evaluation Committee	06/20/13
4. Selection of Finalists	Evaluation Committee	06/21/13
5. Interviews	HIX	06/24/13
6. Finalize Contract	HIX	06/27/13
7. Contract Award	HIX	07/01/13
8. Contract Effective Date (approximate)	HIX	07/01/13

B. EXPLANATION OF EVENTS

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

1. Issuance of RFP

This RFP is being issued by HIX. Potential Offerors may obtain a copy of the RFP from the Procurement Manager. The RFP may also be obtained from the HIA website at <http://nmhia.com/nmhix>.

2. Submission of Proposals

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 p.m. MOUNTAIN DAYLIGHT TIME ON **June 18, 2013**. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal by the Procurement Manager. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph E. Proposals must be sealed and labeled on the outside of the package to clearly indicate a response to the HIX Legal Representation RFP. Proposals submitted by facsimile will not be accepted.

3. Proposal Evaluation

The evaluation of proposals will be performed by an Evaluation Committee appointed by the HIX Board. The evaluation process will take place on **June 20, 2013**. During this time, the Procurement Manager may initiate discussion with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the previously submitted proposals. Discussions SHALL NOT be initiated by the Offerors.

4. Selection of Finalists

The Evaluation Committee will select and the Procurement Manager will notify the finalist Offeror(s) on **June 21, 2013**.

5. Finalize Contract

The contract will be finalized with the most advantageous Offeror on or about **June 27, 2013**. In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process or to cancel the award. This process of moving to the next most advantageous Offeror without undertaking a new procurement may continue, at the discretion of the HIX, until all Offerors on the original list of finalists is exhausted.

6. Contract Award

After review of the Evaluation Committee Report, the recommendation of HIX, and the contract being signed by the HIX Board, the HIX will give notice of award of the contract on or about **July 1, 2013**. This date is subject to change at the discretion of the HIX.

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

C. GENERAL REQUIREMENTS

1. Acceptance of Conditions Governing the Procurement and Other Factors

Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section IV of this RFP.

2. Incurring Cost

Any costs incurred by the Offeror in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

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

4. Subcontractors

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

5. Amended Proposals

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

6. Offerors' Rights to Withdraw Proposal

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

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after the due date for the receipt of a best and final offer, if one is solicited.

8. Disclosure of Proposal Contents

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

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

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

9. No Obligation

This procurement in no manner obligates the HIX to the use of any proposed professional services until a valid written contract is awarded and approved by the parties.

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 HIX determines such action to be in the best interest of the HIX.

11. Legal Review

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

12. Governing Law

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

13. Basis for Proposal

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

14. Contract Terms and Conditions

The contract between the HIX and a contractor will follow the format specified by the HIX and contain the terms and conditions set forth in Appendix B, "Sample Professional Services Contract." However, the HIX reserves the right to negotiate with a successful Offeror provisions in addition to those or different than contained in this RFP or Appendix B. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the contract.

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

15. Offerors' Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the HIX. Only terms and conditions that are additional, and agreed to by the HIX, as evidenced by inclusion in a duly executed contract, will be included in the contract between the parties.

16. Contract Deviations

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

17. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a

responsive offer.

18. Right to Waive Irregularities

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

19. Change in Contractor Representatives

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

20. Notice

New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks. Offeror will be required to attest to their compliance with these requirements. The HIX is not subject to the terms of the New Mexico Procurement Code (“Code”) and although it may voluntarily follow a process similar to that utilized by the Code, Offeror agrees and understands that this RFP is not subject to and that Offeror will not have any rights, nor the HIX any of the obligations, of the Code.

21. HIX Rights

The HIX reserves the right to accept all or a portion of an Offeror's proposal.

22. Right to Publish

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

23. Confidentiality

Any confidential information provided to, or developed by, the contractor in the performance of services under the services agreement 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 HIX. The Contractor agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the HIX's prior written permission.

24. 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.

25. Use of Electronic Versions of this RFP

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

26. New Mexico Employees Health Coverage

If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the potential contract, the Offeror certifies, by submitting a signed coverage form contained in Appendix E along with the proposal, to have in place, and agree to maintain for the term of a potential contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2013 if the expected annual value in the aggregate of any and all contracts between the Offeror and the HIX exceed \$250,000 dollars.

The Offeror 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 representatives of the state.

The Offeror agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: www.insurenewmexico.state.nm.us.

III. RESPONSE FORMAT AND ORGANIZATION

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

A. NUMBER OF RESPONSES

Offerors may submit one (1) proposal.

B. NUMBER OF COPIES

Offerors shall provide one (1) original and five (5) identical copies of their proposal to the location specified in Section I, on or before the closing date and time for receipt of proposals. The Offeror shall not distribute the proposal to any entity not specified in this RFP.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 ½" x 11" paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. The pages should generally have one-inch margins and font size shall be no smaller than Times New Roman 12.

D. PROPOSAL ORGANIZATION AND ORDERING

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

- Signed Letter of Transmittal
- Table of Contents
- Proposal Summary
- Response to Mandatory Specifications
- New Mexico Employees Health Coverage Form
- Campaign Contribution Disclosure Form
- Suspension and Debarment Statement
- Response to HIX Terms and Conditions
- (OPTIONAL) Offeror's Additional Terms and Conditions
- Completed Cost Response Form

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features 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.

E. LETTER OF TRANSMITTAL

Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:

- Identify the submitting organization
- Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization
- Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization
- Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification
- Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1
- Be signed by the person authorized to contractually obligate the organization
- Acknowledge receipt of any and all amendments to this RFP.

F. TABLE OF CONTENTS

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

G. PROPOSAL SUMMARY

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

H. 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.

I. NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM

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

J. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Offeror must complete and sign the Appendix D, Campaign Contribution Form – whether any

applicable contribution has been made or not. This form must be submitted with the proposal whether an applicable contribution has been made or not.

K. SUSPENSION AND DEBARMENT STATEMENT

The Offeror must agree to certify compliance with federal regulations relating to suspension and debarment.

L. 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 as set forth in Exhibit A, Scope of Work of the Sample Professional Services Contract, attached as Appendix B. As provided in Section III. M, should the Offeror object to any of the HIX' terms and conditions, as contained in Appendix A, 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.

M. OFFEROR'S ADDITIONAL 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 HIX.

N. 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 & EVALUATION

Unless otherwise specified, Offerors must respond in the form of a thorough narrative to each specification. Narratives should include details as to how Offeror proposes to accomplish each item.

A. MANDATORY SPECIFICATIONS

Failure to respond to a mandatory specification will result in the disqualification of the proposal as non-responsive.

- Five (5) years minimum experience in Health Insurance law.
- PPACA resources and experience.
- Five (5) years minimum experience in federal and state litigation or regulatory practice.
- Legal malpractice insurance.
- Admitted to New Mexico Bar or associated with a New Mexico Attorney.
- Campaign Contribution Disclosure Form.
- New Mexico Employees Health Coverage Form.
- Cost Response Form.

B. DESIREABLE SPECIFICATIONS AND EVALUATION FACTORS

1. Accessibility & Flexibility (200 points)

The HIX desires an Offeror with the ability to provide services on short notice. Please provide a narrative plan to describe how this desirable will be met. Offerors are encouraged to submit a backup plan in case Offeror cannot be reached.

2. Commercial Insurance Experience (200 points)

Provide a narrative on the extent, quality and nature of the Offeror's experience in commercial insurance beyond the five (5) year mandatory minimum. Offerors are encouraged to provide copies of resumes or curriculum vitae of any attorneys who will be providing services under this RFP.

3. PPACA Experience (200 points)

Provide a narrative on the extent, quality and nature of the Offeror's PPACA experience, knowledge and resources.

4. Cost (200 points)

Offerors must submit a Cost Response Form setting forth the hourly rate for each partner, associate and support staff that is anticipated to perform work under the contract. Offerors must include an estimated percentage of the amount of the work that will be performed by each position. The total of the estimated percentages must equal 100%.

The Cost Response Form must also fully disclose all standard charges for costs and fees to include any minimal charges or rounding of billable time. Offerors should submit a description of all anticipated charges for provision of legal services (i.e. long distance calls, copying fees, service of process). Offerors should also provide an estimate of initial costs incurred to enter into the pending litigation on behalf of the HIX.

5. New Mexico License (50 points)

Please provide evidence of licensure by New Mexico Bar, if applicable.

C. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

	FACTOR	MAXIMUM POINTS AVAILABLE
	MANDATORY SPECIFICATIONS	
	5 years of health insurance or relative experience	pass/fail
	Knowledge of/ familiarity with PPACA legislation	pass/fail
	5 years litigation or regulatory experience	pass/fail
	Evidence of Malpractice Insurance	pass/fail
	NM Bar admission or association with NM attorney	pass/fail
	Campaign Contribution Disclosure Form	pass/fail
	New Mexico Employees Health Coverage	pass/fail
	Completion of Cost Form	pass/fail
	DESIRABLE SPECIFICATIONS	
	Accessibility & Flexibility	200
	Commercial Insurance experience	200
	PPACA experience	200
	Cost	200
	New Mexico Licensure	50

Total Points

850 Points

D. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements 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, Paragraph B. 6.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C. 18.
4. Responsive proposals will be evaluated on the factors in Section IV that have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible Offeror whose proposal is most advantageous to the HIX, taking into consideration the evaluation factors in Section IV, will be recommended for contract award as specified in Section II, Paragraph B.9. 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

Contract Terms and Conditions

NEW MEXICO HEALTH INSURANCE EXCHANGE

Sample PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract (PSC) is made and entered into by and between the New Mexico Health Insurance Exchange, hereinafter referred to as the "HIX", and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor", and is effective as of the date set forth below.

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Scope of Work

A. The Contractor shall provide legal representation regarding the HIX insurance program. The legal representation includes advice and counsel on New Mexico Insurance code, PPACA, federal and state Medicaid statutes and regulations, assistance and advocacy in HIX dealings with the Centers for Medicare & Medicaid Services ("CMS"), Center for Consumer Information and Insurance Oversight and other federal agencies, and legal guidance.

2. Compensation

B. The HIX shall pay to the Contractor in full payment for services satisfactorily performed [*at the rate of _____dollars (\$_____) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.)*] such compensation not to exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by the Contractor under this PSC shall equal the amount stated herein. The New Mexico gross receipts tax levied on the amounts payable under this PSC shall be paid by the Contractor. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. The Contractor is responsible for notifying the HIX when the services provided under this PSC 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 PSC being amended in writing prior to those services in excess of the total compensation amount being provided.

C. The Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HIX 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 HIX 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 HIX shall not incur late charges, interest, or penalties for failure to make payment within the

time specified herein.

3. Term

This PSC shall terminate on **July 1, 2015** unless terminated pursuant to Paragraph 4 (Termination).

4. Termination

A. Termination. This PSC may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this PSC, the HIX's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the HIX is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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 PSC. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this PSC may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the HIX or if, during the term of this PSC, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE HIX OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS PSC.

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

5. Status of Contractor

The Contractor and its agents and employees are independent contractors performing professional services for the HIX and are not employees of HIX. 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 HIX as a result of this PSC. 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 HIX unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

6. Assignment

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

7. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this PSC without the prior written approval of the HIX.

8. Release

Final payment of the amounts due under this PSC shall operate as a release of the HIX, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this PSC.

9. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this PSC 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 HIX.

10. Product of Service – Copyright

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

11. Conflict of Interest: Governmental Conduct Act

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

12. Amendment

A. This PSC 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 HIX proposes an amendment to the PSC 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 PSC, pursuant to the termination provisions contained herein, or to agree to the reduced funding.

13. Merger

This PSC 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 PSC. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this PSC.

14. Penalties for violation of law

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

15. Equal Opportunity Compliance

In addition to the provisions concerning non-discrimination set forth in Section 29, Non-Discrimination, 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 PSC. If the Contractor is found not to be in compliance with these requirements during the life of this PSC, the Contractor agrees to take appropriate steps to correct these deficiencies.

16. Applicable Law

The laws of the State of New Mexico shall govern this PSC, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction. By execution of this PSC, the 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 PSC.

17. 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 PSC may be terminated by the HIX.

18. Records and Financial Audit

A. The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the PSC's term and effect and retain them for a period of five (5) years from the date of final payment under this PSC. The records shall be subject to inspection by the HIX. The HIX shall have the right to audit billings both before and after payment. Payment under this PSC shall not foreclose the right of the HIX to recover excessive or illegal payments.

B. Contract for an independent A-133 audit at the Contractor's expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HIX. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the PSC in accordance with procedures promulgated by OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be provided to the HIX and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HIX for good cause and the HIX reserves the right to approve or reject any such request. The HIX retains the right to contract for an independent financial and functional audit for funds and operations under this PSC at Contractor's expense if it determines that such an audit is warranted or desired.

C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall provide the HIX with four (4) originals of the audit report. The HIX will retain two (2) and one (1) will be sent to the HIX/Office of Inspector General and one (1) to the HIX/Administrative Services Division.

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

E. This audit shall contain a report of financial expenditures by category for each program to facilitate ease of reconciliation by the HIX. This audit shall also include a review of personnel records and a schedule of depreciation for all property or equipment with a purchase price of \$5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

19. Indemnification

The Contractor shall defend, indemnify and hold harmless the HIX 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 PSC, 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 PSC. 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 PSC 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 HIX by certified mail.

20. New Mexico Employees Health Coverage

A. If the Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, the Contractor certifies, by signing this PSC, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than the effective date of the PSC if the expected annual value in the aggregate of any and all contracts between the Contractor and the State exceed \$250,000.

B. The 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. The Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: www.insurenemexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); the Contractor agrees 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.

21. Employee Pay Equity Reporting

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

22. Invalid Term or Condition

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

23. Enforcement of PSC

A party's failure to require strict performance of any provision of this PSC 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 PSC 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 PSC 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 HIX: Mike Nunez, Procurement Manager
New Mexico Health Insurance Exchange
506 Agua Fria Street
Santa Fe, NM 87501
mnunez@nmhia.com

To the Contractor: Name of CONTRACTOR
Street/PO Box
Address, City, State
Zip code
Email address

25. Authority

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

26. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

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

(1) The Contractor shall provide immediate written notice to the HIX's Procurement Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

(2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HIX, the HIX may terminate the PSC.

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

27. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in Subparagraph (B) of this certification.

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

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment

or modification of any Federal contract, grant, loan, or cooperative agreement; and

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

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

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

28. Non-Discrimination

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

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

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

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

29. **Drug Free Workplace**

A. Definitions. As used in this paragraph "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C § 812, and as further defined in regulation at 21 CFR §§ 1308.11 - 1308.15. "Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes. "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance. "Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance. "Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance. "Individual" means an Offeror/contractor that has no more than one employee including the Offeror/contractor.

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

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

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

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

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

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

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the HIX Procurement Manager in writing within ten (10) days after receiving notice under B. (4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

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

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of B. (1) through B. (6) of this paragraph.

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

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

30. Findings and Sanctions

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

B. The Contractor will make repayment of any funds expended by the HIX subject to the jurisdiction and authority of which an auditor finds were expended, or to which one of both of the federal funding agencies, United States Department of Health and Human Services (DHHS) takes exception and requests reimbursement through a disallowance or deferral is based upon the acts or omissions of the Contractor which violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

C. If the HIX 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 HIX officials.

31. Performance

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

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

B. Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this PSC. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this PSC. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

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

D. No work involving returns and return information furnished under this PSC will be subcontracted without prior written approval of the Internal Revenue Service (IRS).

E. The Contractor will maintain a list of employees authorized access. Such list will be provided to the HIX and, upon request, to the IRS reviewing office.

F. The HIX will have the right to void the PSC if the Contractor fails to provide the safeguards described above.

32. Criminal/Civil Sanctions

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

B. Each officer or employee of any person to who returns or return information is or may be disclosed shall be notified in writing by such person that any returns or return information made available in any format shall be used only for the purpose of carrying out the provisions of this PSC. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this PSC. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.

C. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.

D. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5U.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 the HIX records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

E. Granting a contractor access to Federal Tax Information (FTI) must be preceded by certifying that each individual understands the HIX's security policy and procedures for safeguarding IRS information. The Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the HIX's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, *IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information* and Exhibit 5, *IRC Sec. 7213 Unauthorized Disclosure of Information*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See IRS Publication 1075, *Tax Information Security Guidelines*). For both the initial certification and the annual certification, the Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

33. Inspection

The IRS and the HIX shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this PSC. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, parties have executed this PSC

By: _____
NMHIX

Date: _____

By: _____
Contractor

Date: _____

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

ID Number: 00-000000-000

By: _____
New Mexico Taxation and Revenue Department

Date: _____

APPENDIX B

Cost Response Form

(Submit one form for each position that will perform work under the contract)

The Offeror listed below submits the following form, fixed hourly rate to be charged for all work done.

Position _____

Hourly Rate \$ _____

Estimate percentage of work under the contract that this position will perform _____%

Offeror Name: _____

Fully describe all costs and fees to include minimal charges for services (i.e., billing is rounded to nearest quarter hour.)

APPENDIX C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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

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

The following definitions apply:

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

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

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

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

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

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

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

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

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

Signature

Date

Title (Position)

APPENDIX D

New Mexico Employees Health Coverage Form

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Offeror must agree to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Offeror and the State exceed \$250,000 dollars.
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
3. Offeror must agree to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information <http://insurenemexico.state.nm.us/>.
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); these requirements shall apply the first day of the second month after the Offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000.

Signature of Offeror: _____ Date: _____