



**THE NEW MEXICO HEALTH INSURANCE EXCHANGE**

**REQUEST FOR PROPOSALS FOR**

**Recruiting and Hiring Services**  
**for the position of Chief Executive Officer (CEO)**

RFP No. 2022.003

RFP Release Date: Friday, May 27, 2022

Proposal Due Date: Monday, June 13, 2022, 5:00 PM MST

# **I. INTRODUCTION**

## **A. PURPOSE**

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals and to establish a contract through competitive negotiations for recruiting and hiring services for the position of a Chief Executive Officer (CEO) of the New Mexico Health Insurance Exchange.

## **B. BACKGROUND INFORMATION**

The New Mexico Health Insurance Exchange (the “Exchange”), also known as beWellnm or NMHIX, is New Mexico’s health insurance marketplace. The Exchange was created in 2013 with the enactment of SB 221, the New Mexico Health Insurance Exchange Act (the Act, NMSA 1978, § 59A-23F). The mission of the Exchange is to promote efforts to educate and enroll New Mexicans in affordable health insurance coverage that promotes better access to timely, high quality health care. Its vision is to achieve a healthier New Mexico through access to affordable health insurance. Until last year, the Exchange operated as a State-Based Marketplace utilizing the Federal Platform (SBM-FP). In 2021, in advance of open enrollment for Plan Year 2022, the Exchange transitioned from a SBM-FP to a fully State-Based Marketplace (SBM).

The Chief Executive Officer (CEO) of the Exchange resigned in March 2022. Through an emergency procurement, the Exchange procured an interim management services company. The Exchange is now undertaking to procure recruiting and hiring services for the position of CEO of the Exchange.

## **C. SCOPE OF PROCUREMENT**

This is an RFP for recruiting services for the position of CEO of the Exchange, as further defined in the Scope of Work, Section IV(A). The contract resulting from this procurement will be for an anticipated term of no more than 1 year. The resulting contract will be 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 Exchange 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: Aryn M. Fitzwater  
Address: New Mexico Health Insurance Exchange  
7601 Jefferson St. NE, Ste. 120, Albuquerque, NM 87109  
Telephone: (505) 314-5215  
Email: [RFP@nmhix.com](mailto:RFP@nmhix.com)  
*\*Please include “CEO Recruiting and Hiring Services” in the subject of all emails.*

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 Exchange employees, Board members or Evaluation Committee members do not have the authority to respond on behalf of the Exchange.
2. **Protests of the solicitation or award must be submitted in writing to the Protest Manager identified in Section I.D.** 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 DELIVERY

Proposals should be submitted to the Procurement Manager **VIA EMAIL** at: [RFP@nmhix.com](mailto:RFP@nmhix.com)

## F. DEFINITION OF TERMINOLOGY

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

1. “**Agency**” means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
2. “**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.
3. “**Award**” means the final execution of the contract document.
4. “**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.
5. “**Contract**” means any agreement for the procurement of items of tangible personal property, services or construction.
6. “**Contractor**” means any business having a contract with a state agency or local public body.

7. “**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.
8. “**Evaluation Committee**” means a body appointed to perform the evaluation of Offerors’ proposals.
9. “**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.
10. “**Final Award**” means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
11. “**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.
12. “**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.
13. “**IT**” means Information Technology.
14. “**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.
15. “**Minor Irregularities**” means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement.
16. “**Offeror**” is any person, corporation, or partnership who chooses to submit a proposal.
17. “**Procurement Manager**” means any person or designee authorized by a state agency or local public body to enter into or administer contracts and make written determinations with respect thereto.
18. “**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.
19. “**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.

20. “**Request for Proposals (RFP)**” means all documents, including those attached or incorporated by reference, used for soliciting proposals.
21. “**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.
22. “**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.
23. “**State (the State)**” means the State of New Mexico.
24. “**State Agency**” means the New Mexico Health Insurance Exchange.
25. “**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.

## II. CONDITIONS GOVERNING THE PROCUREMENT

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

### A. SEQUENCE OF EVENTS

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

<b>Action</b>	<b>Responsible Party</b>	<b>Due Dates</b>
1. Issue RFP	Exchange	May 27, 2022
2. Acknowledgment of Receipt Form	Potential Offerors	June 3, 2022
3. Deadline to submit Questions	Potential Offerors	June 3, 2022
4. Response to Written Questions	Procurement Manager	June 6, 2022
<b>5. Proposals Due</b>	<b>Offerors</b>	<b>June 13, 2022</b>
6. Proposal Evaluation and Selection of Finalists	Evaluation Committee	June 13, 2022 – June 15, 2022
7. Best and Final Offers (if applicable)	Finalist Offerors	June 17, 2022

8. Oral Presentation(s) (if requested)	Finalist Offerors	June 20, 2022
9. Contract Finalized	Exchange/Selected Offeror	No later than June 24, 2022
10. Award Issued	Exchange	No later than June 25, 2022
11. Protest Deadline	Exchange	15 days after award is issued

\*Dates indicated in Events 7 through 11 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. Issuance of RFP**

This RFP is being issued by the New Mexico Health Insurance Exchange on May 27, 2022.

### **2. Acknowledgement of Receipt**

Offerors may hand deliver, e-mail ([RFP@nmhix.com](mailto:RFP@nmhix.com)), or send by registered or certified mail the Acknowledgement of Receipt Form (Appendix A), to the Procurement Manager identified in Section I.D above, to have their organization placed on the procurement Distribution List. The form should be signed by an authorized representative of the Offeror organization returned to the Procurement Manager by 5:00 pm MDT on June 3, 2022.

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 will not be included on the distribution list, and will be solely responsible for obtaining from the Procurement Manager any responses to written questions and any amendments to the RFP.

### **3. Deadline to Submit Written Questions**

Offerors may submit written questions, via email ([RFP@nmhix.com](mailto:RFP@nmhix.com)), to the Procurement Manager as to the intent or clarity of this RFP until 5:00 p.m. MDT on June 3, 2022. All written questions must be addressed to the Procurement Manager. 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**

Responses to written questions will be distributed as indicated in the Sequence of Events to all Offerors listed on the procurement distribution list. A copy will be sent via email to all Offerors that provide Acknowledgement of Receipt forms before the applicable deadline (see Section II.A above).

## **5. Submission of Proposal**

ALL PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 5:00 PM MDT ON MONDAY, JUNE 13, 2022. **NO LATE PROPOSAL CAN BE ACCEPTED.**

*Proposals must be addressed and delivered VIA EMAIL to the Procurement Manager at the address or email address identified in Section I.D.*

Please include the following in the email subject line: *CEO Recruiting and Hiring Services, RFP No. 2022.003.*

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 RFP. “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 evaluate the proposals. This process will take place as indicated in the Sequence of Events, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions 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 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. Best and Final Offers**

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

## **9. Oral Presentations**

Finalist Offerors may be required to participate in interviews or presentations, either telephonically or at a location to be determined, as per schedule Section II.A, Sequence of Events or as soon as possible after the Evaluation Committee has selected finalists. Whether or not interviews or presentations will be held is at the discretion of the Evaluation Committee. If the Evaluation Committee decides to hold interviews or presentations, the Procurement Manager will notify the finalist Offerors of this decision as soon as possible. Failure to comply with requests for discussions, additional information, interviews or presentations may result in rejection of the proposal.

## **10. Finalize Contractual Agreement**

After approval of the Evaluation Committee Report, any contractual agreement resulting from this RFP will be finalized with the most advantageous Offeror, 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 Exchange reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

A Notice of Intent to Award will be sent to the Offeror whose proposal is the most advantageous to the Exchange. The Offeror shall promptly participate in negotiation and execution of the contractual agreement resulting from this RFP.

## **11. Contract Award**

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

## **12. Protest Deadline**

Any protest by an Offeror must be timely submitted and in conformance with §13-1-172, NMSA 1978 and applicable procurement regulations. As a Protest Manager has been named in this RFP, pursuant to §13-1-172, NMSA 1978 and 1.4.1.82 NMAC, ONLY protests delivered directly to the Protest Manager in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day following the notice of award of contract and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day. Protests must be written and must include the name and address of the protestor and the request for proposal number. They must also contain a statement of the grounds for protest including appropriate supporting exhibits, and must specify the ruling requested. Protests must be delivered to Anita Schwing, Protest Manager, at [protests@nmhix.com](mailto:protests@nmhix.com). **Protests received after the deadline will not be accepted.**

## C. GENERAL REQUIREMENTS

### 1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of these Conditions Governing the Procurement, Section II, by completing and signing the Letter of Transmittal form, located in Appendix E.

### 2. Incurring Cost

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

### 3. Prime Contractor Responsibility

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with the Exchange which may derive from this RFP. The Exchange 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 Exchange, before any subcontractor is used during the term of the agreement resulting from this RFP.

The Contractor will not subcontract any portion of the services to be performed under the contract without the prior express written approval of the Exchange and will include all proposed subcontractors in its proposal. In the event the Exchange approves any subcontractor, the Contractor will remain fully responsible for complying with the duties and obligations under the contract.

Any use of subcontractors by the Contractor will not obligate the Exchange as a party to the subcontract, nor create any right, claim, or interest for the subcontractor against the Exchange, its agents, employees, representatives, or successors. The parties agree that there are no third-party beneficiaries, intended or otherwise, to the contract.

### 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. **The Exchange 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 and 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 Exchange. 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 in this RFP, 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 Exchange 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 New Mexico Health Insurance Exchange to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate

authorities. The Exchange reserves the right to reject any or all proposals received in response to this RFP at any time prior to the execution of the contract. No Offeror shall acquire any legal or equitable rights through this RFP or any action or inaction by the Exchange unless and until a contract has been fully executed by the successful Offeror and the Exchange.

## **10. Termination, Amendment or Withdrawal of RFP**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Exchange determines such action to be in its best interest. Any cancellation or amendment will be sent to the procurement distribution list.

## **11. Sufficient Funding**

Any contract awarded as a result of this RFP process is contingent upon approval by the Exchange's Board of Directors, the continued authorization of the Exchange by the Legislature of New Mexico and the ability of the Exchange to obtain necessary funds by assessments, grants, or other means. Such contract may be terminated by written notice to the Contractor if sufficient funding does not exist. The Exchange's decision as to whether sufficient funding and authorizations are available will be accepted by the Contractor as final.

## **12. Legal Review**

The Exchange 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. Any and all litigation or actions commenced in connection with this RFP or the resulting contract shall only be brought in a federal or state court of competent jurisdiction in 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 the Exchange and a contractor will follow the format specified by the Exchange and contain the terms and conditions set forth in the Appendix C, Draft Contract. However, the Exchange 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 Exchange 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 Exchange (and its evaluation team), 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 Exchange 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 Exchange 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 Exchange. 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 RFP process prior to selection as successful Offeror) will be discussed only between the Exchange 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 Exchange reserves the right to require a change in Contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Exchange, adequately meeting the needs of the Exchange.

## **21. Notice of Penalties**

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

## **22. Exchange Rights**

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

## **23. Right to Publish**

Throughout the duration of this procurement process and the resulting contract term, Offerors and Contractors must secure from the Exchange written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or any contract 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 Exchange and shall not be returned to the Offeror. If the RFP is cancelled, all responses received shall be destroyed by the Exchange unless the Offeror either picks up, or arranges for pick-up, the materials within three (3) business days of notification of the cancellation. Offeror is responsible for all costs involved in return mailing/shipping of proposals.

## **25. Release of Claims**

By submitting a proposal, the Offeror agrees that it waives and releases all claims or causes of action against the Exchange based on any misunderstanding concerning the information

provided in this RFP or concerning the Exchange's failure, negligent or otherwise, to provide the Offeror with pertinent information in this RFP.

## **26. 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 Exchange.

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 Exchange's written permission.

## **27. Conflict of Interest**

By submitting a proposal to this RFP, Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any matter or degree with the performance or services required under a contract resulting from this RFP. Offeror certifies that it is in compliance with the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through 10-16-18, regarding contracting with a public officer or state employee or former state employee.

## **28. Electronic mail address required**

Some of the communication regarding this procurement may be conducted by electronic mail (email). Offeror must have a valid email address to receive such correspondence.

## **29. 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 Exchange, the Offeror acknowledges that the version maintained by the Exchange shall govern.

## **30. 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.**

## **31. Letter of Transmittal**

Offeror's proposal must be accompanied by an **unaltered** Letter of Transmittal Form (Appendix E), which must be **completed** and **signed** by the individual authorized to

contractually obligate the company, identified in #2 below. **DO NOT LEAVE ANY OF THE ITEMS ON THE FORM BLANK** (N/A, None, Does not apply, etc. are acceptable responses).

The Letter of Transmittal MUST:

1. Identify the submitting business entity (its Name, Mailing Address and Phone Number);
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 required if the responses differs from the individual identified in A*);
3. Identify sub-contractors, if any, anticipated to be utilized in the performance of any resultant contract award;
4. Describe any relationship with any other entity (such as State Agency, reseller, etc., that is not a sub-contractor identified in #3), if any, which will be used in the performance of this awarded contract; and
5. Be signed and dated by the person identified in #2 above; 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 respond to ALL items as indicated above, will result in Offeror's disqualification.**

### **32. 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 Exchange 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 Exchange. If it is later determined that the Contractor knowingly rendered an erroneous disclosure,

in addition to other remedies available to the Government, the Exchange may terminate the involved contract for cause. Still further the Exchange may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the Exchange.

### **33. New Mexico Preferences**

To ensure adequate consideration and application of §13-1-21, NMSA 1978 (as amended), Offerors **must** include a copy of their preference certificate with their proposal. Certificates for preferences must be obtained through the New Mexico Department of Taxation & Revenue <http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx>.

#### **A. New Mexico Business Preference**

A copy of the certification must accompany Offeror's proposal.

#### **B. New Mexico Resident Veterans Business Preference**

A copy of the certification must accompany Offeror's proposal.

The Exchange shall not award a business both a resident business preference and a resident veteran business preference.

## **III. RESPONSE FORMAT AND ORGANIZATION**

### **A. NUMBER OF RESPONSES**

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

### **B. PROPOSAL FORMAT**

Proposals should be submitted with a single-spaced text in 12-point font with one-inch margins. The complete proposal should be less than fifteen (15) pages. Any proposal that does not adhere to the requirements of this RFP may be deemed non-responsive and rejected on that basis.

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 (Document 1) – DO NOT INCLUDE ANY COST INFORMATION IN THE TECHNICAL PROPOSAL.**

- A. Signed Letter of Transmittal
- B. Signed Campaign Contribution Form
- C. Table of Contents
- D. Proposal Summary (Optional)
- E. Response to Contract Terms and Conditions (from Section II.C.15)

- F. Offeror's Additional Terms and Conditions (from Section II.C.16 )
- G. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal/Document 2**)
  - 1. Organizational Experience
  - 2. Organizational References
  - 3. Oral Presentation (if applicable)
  - 4. Mandatory Specifications
  - 5. New Mexico Preferences (if applicable)
- H. Other Supporting Material (if applicable)

**Cost Proposal (Document 2):**

- 1. Completed Cost Proposal

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 (Document 2).**

A Proposal Summary may be included in Offeror's Technical Proposal (Document 1), 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.**

## **IV. SPECIFICATIONS**

### **A. DETAILED SCOPE OF WORK**

The contracted vendor will be responsive for the following scope of work:

#### ***Phase I – Position Sourcing***

- Interviewing staff and the CEO Search Committee to define the position requirements for the CEO of the Exchange
- Updating and/or developing a position description for the Board's review and approval
- Working with the CEO Search Committee to update the salary range, using current market comparables, and determining appropriate relocation package for out-of-state candidates
- Developing a recruitment strategy that includes specific job boards to advertise with, identifying relevant professional associations to advertise the position through, methods for reaching candidates nationwide, appropriate online job boards, etc.
- Preparing a job posting.

#### ***Phase II – Position Screening***

- Evaluating each applicant's resume and job application to determine which applicants meet the minimum qualifications, based on the position description
- Coordinating and conducting phone interviews with selected candidates

- Reviewing the phone interview evaluation results with the CEO Search Committee of the Board of Directors
- Assisting the CEO Search Committee in identifying candidates for in person interviews

***Phase III – Interviewing***

- Assisting the Board and CEO Search Committee in identifying the appropriate NMHIX staff and Board members to participate on the Interview Panel
- Providing the Interview Panel with an interview process, interview guide, and interview evaluation criteria
- Conducting a behavioral profile on each finalist candidate
- Coordinating and facilitating in-person interviews with the Interview Panel
- Participating on the Interview Panel
- Facilitating debriefing sessions following candidate interviews
- Evaluating candidates for management's consideration, based on input and an assessment from Interview Panel. The selection of candidate finalists will be made by the CEO Search Committee and/or Board, and not by the chosen vendor.
- Conducting a background check on finalist candidates.

***Phase IV – Reference Checks and Hiring***

- Verifying employment references
- Working with the CEO Search Committee and Board to determine an appropriate offer to make to the candidate of their choosing (which, in addition to base compensation amount, may include relocation, leave benefits and other perks)
- Coordinating the offer, creating an offer letter, and extending the offer on behalf of the Board
- Notifying other candidates that had gone through a phone interview or an in-person interview, that they were not selected.

**B. TECHNICAL SPECIFICATIONS**

**1. Organizational Experience**

Offerors 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 independent assessment services. All independent assessment services provided to private sector will also be considered;
- b) provide a brief resume of all key personnel Offeror proposes to use in performance of the resulting contract, should Offeror be awarded. Key personnel are identified as executive, account management team, and staff primarily responsible for the for the

satisfactory completion of the work. Offeror must include key personnel education, work experience, and relevant certifications/licenses;

- c) describe at least two project successes and failures of a similar engagement. Include how each experience improved the Offeror's services.

## 2. Organizational References

Offeror must provide a list of a minimum of three (3) references from similar projects/programs performed for private, state or large local government clients within the last seven (7) years. Members of the Exchange and its Board of Directors may not serve as organizational references for any Offeror.

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.

## C. BUSINESS SPECIFICATIONS

### 1. Letter of Transmittal Form

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form located in Appendix E. The form **must** be completed and must be signed by the person authorized to obligate the company. **Failure to respond to ALL items, as indicated in Section II.C.31 and Appendix E, and to return a signed, unaltered form will result in Offeror's disqualification.**

## 2. Campaign Contribution Disclosure Form

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

## 3. Oral Presentation

If selected as a finalist, Offerors agree to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee, at the option of the Exchange. The Evaluation Committee may request a finalist to provide an oral presentation of the proposal as an opportunity for the Evaluation Committee to ask questions and seek clarifications. The Exchange may also accept proposals without such interviews, discussions, or presentations. The interview, discussion or presentation may occur telephonically, at the Exchange offices, via the Internet, or at another location as specified by the Exchange.

## 4. Cost

Offerors must complete the Cost Proposal in Appendix D. Cost will be measured by the formula in V.B.8 below.

## 5. Resident Business or Resident Veterans Preference

To ensure adequate consideration and application of NMSA 1978, § 13-1-21 (as amended), Offerors **MUST** include a copy, in this section, of its NM Resident preference certificate, as issued by the New Mexico Taxation and Revenue Department.

# 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 Offeror proposals by sub-category.

<b>Evaluation Factors</b> <i>(Correspond to section IV.B and IV C)</i>	<b>Points Available</b>
<b>B. Technical Specifications (Total Points: 650)</b>	
B.1 Organizational Experience	25
B.2 Organizational References	25
B.3 Mandatory Specifications (600)	
Phase I – Position Sourcing	150
Phase II – Position Screening	150
Phase III – Interviewing	150
Phase IV – Reference Checks and Hiring	150

<b>C. Business Specifications (Total Points: 350)</b>	
C.1 Letter of Transmittal	Pass/Fail
C.2 Campaign Contribution Disclosure Form	Pass/Fail
C.3 Oral Presentations (if requested)	50
C.4 Cost	300
<b>TOTAL POINTS AVAILABLE</b>	<b>1,000</b>
C.5 New Mexico Preference - Resident Vendor Points per Section IV C.5	50
New Mexico Preference - Resident Veterans Points per Section IV C.6	100

Table 1: Evaluation Point Summary

## **B. EVALUATION FACTORS**

### **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.

### **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 Exchange 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.

### **B.3 Mandatory Specifications**

The Offeror must demonstrate its ability to perform the services in Section IV(A).

- Phase I – Position Sourcing
- Phase II – Position Screening
- Phase III – Interviewing
- Phase IV – Reference Checks and Hiring

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

Pass/Fail only. No points assigned.

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

Pass/Fail only. No points assigned.

**C.3 Oral Presentation (if requested) (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, the Exchange will provide the Offeror a presentation agenda. If no Oral Presentations are held all Offerors will receive the maximum amount of total points for this Evaluation Factor.

**C.4 Cost (See Table 1)**

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.5 New Mexico Preferences**

Percentages will be determined based upon the point-based system outlined in NMSA 1978, § 13-1-21 (as amended).

**New Mexico Resident Business Preference**

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Business is 5% of the total points available in this RFP.

**New Mexico Resident Veterans Business Preference**

If the Offeror has provided a copy of their Preference Certificate the Preference Points for a New Mexico Resident Veteran Business is 10% of the total points available in this RFP.

**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. 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 will be selected as finalist Offerors, based upon the proposals submitted. In accordance with 13-1-117 NMSA 1978, the responsible Offeror whose proposal is the most advantageous to the Exchange 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

### REQUEST FOR PROPOSALS CEO Recruiting and Hiring Services RFP No. 2022.003

#### ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this RFP, the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with Appendix F.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than June 3, 2022. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

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

Firm does/does not (circle one) intend to respond to this RFP.

RFP for CEO Recruiting and Hiring Services, RFP No. 2022.003  
Aryn Fitzwater, Procurement Manager  
New Mexico Health Insurance Exchange  
7601 Jefferson St. NE, Ste. 120  
Albuquerque, NM 87109  
Email: [RFP@nmhix.com](mailto:RFP@nmhix.com)

## **APPENDIX B**

### **CAMPAIGN CONTRIBUTION DISCLOSURE FORM** **Campaign Contribution Disclosure Form**

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 131-191.1 (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: \_\_\_\_\_**  
**(Completed by State Agency or Local Public Body)**

**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

\*The draft contract included in this Appendix C represents the contract that the Exchange intends to use to make an award. The Exchange reserves the right to modify the contract prior to, or during, the award process, as necessary.

### NEW MEXICO HEALTH INSURANCE EXCHANGE

PROFESSIONAL SERVICES CONTRACT # \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the NEW MEXICO HEALTH INSURANCE EXCHANGE, hereinafter referred to as the "NMHIX," and **NAME OF CONTRACTOR**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

Contractor shall perform the following work:

**2. Compensation.**

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per hour (OR BASED UPON DELIVERABLES, MILESTONES, BUDGET, ETC.), such compensation not to exceed (AMOUNT), excluding gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by NMHIX to the Contractor. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying NMHIX 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 Funding section set forth below. All invoices **MUST BE** received by NMHIX no later than fifteen (15) days after the termination of the calendar year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Contractor must submit a statement (invoice) which shall include a detailed description of the services performed, who performed the services, and the deliverables achieved. If NMHIX finds that the services are not acceptable, within thirty days after the date of receipt of

written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services and outlining steps the Contractor may take to provide remedial action. Upon certification by NMHIX that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, NMHIX 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 FINAL REQUIRED SIGNATORY. This Agreement shall terminate on **(DATE)** unless terminated pursuant to this Agreement's Termination Clause or Funding Clause. 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.** NMHIX may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon NMHIX's uncured, material breach of this Agreement.

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

1. Except as otherwise provided in sub-paragraph A of this paragraph and the Funding clause of this Agreement, NMHIX shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give NMHIX written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all NMHIX's material breaches of this Agreement upon which the termination is based and (ii) state what NMHIX must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if NMHIX 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, NMHIX 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 NMHIX; (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 the Funding clause of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, NMHIX'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 AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

D. Termination Management. Immediately upon receipt by either NMHIX 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 NMHIX; 2) comply with all directives issued by NMHIX in the notice of termination as to the performance of work under this Agreement; and 3) take such action as NMHIX shall direct for the protection, preservation, retention or transfer of all property titled to NMHIX 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 NMHIX upon termination and shall be submitted to NMHIX as soon as practicable.

5. Funding.

The terms of this Agreement are contingent upon continued authorization of the NMHIX by the Legislature of New Mexico and the ability of NMHIX to obtain necessary funds by assessments, grants, or other means. In the absence of legislative authorization or funding, this Agreement shall terminate immediately upon written notice by NMHIX to the Contractor. NMHIX's determination regarding legislative authorization and funding shall be accepted by the Contractor and shall be final. If NMHIX 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 or general services for NMHIX and are not employees of the NMHIX or 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 NMHIX or 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, business income tax, and gross receipts tax. The Contractor agrees not to purport to bind NMHIX 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 NMHIX.

8. **Subcontracting.**

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

9. **Release.**

Final payment of the amounts due under this Agreement shall operate as a release of NMHIX, 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 the Contractor by NMHIX or, developed by the Contractor based on information provided by NMHIX 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 NMHIX. Upon termination of this Agreement, Contractor shall deliver all confidential information in its possession to NMHIX within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such confidential information to NMHIX will result in direct, special and incidental damages.

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 Agency 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 any way 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 NMHIX employee while such employee was or is employed by NMHIX and participating directly or indirectly in NMHIX'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 NMHIX'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 NMHIX.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which NMHIX relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to NMHIX 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 Clause 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 Clause 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 NMHIX and notwithstanding anything in the Agreement to the contrary, NMHIX may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

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 NMHIX proposes an amendment to the Agreement to unilaterally reduce funding due to budget, funding, 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 the Termination clause of this Agreement, or to agree to the reduced funding.

14. **Merger.**

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

15. **Penalties for Violation of Law.**

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

16. **Equal Opportunity Compliance.**

Contractor agrees to abide by all federal and state laws and rules and regulations pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, 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; Dispute Resolution.**

A. **Applicable Law.** The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions.

B. **Dispute Resolution.** Parties to this Agreement shall utilize methods of alternative dispute resolution to resolve disputes arising under this Agreement. NMHIX and Contractor agree to resolve disputes first through good faith negotiation, and if unsuccessful, through mediation

and/or arbitration. No dispute arising under or relating to this Agreement may be brought in a court of law. The process for alternative dispute resolution is as follows:

- (1) Negotiation. The parties are encouraged to resolve disputes through negotiation prior to mediation or arbitration. In the event of any dispute, claim, question, or disagreement arising from or relating to a contract or the breach thereof, the parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, NMHIX and Contractor shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 30 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be mediated or finally settled pursuant to the Uniform Arbitration Act, NMSA, § 44-7A-1.
- (2) Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties may first try in good faith to settle the dispute by mediation. The Parties may agree upon a mediator and the terms of the mediation including scheduling, pre-mediation information exchange and attendance of appropriate parties at the mediation conference. The mediation shall be scheduled within 30 days of notice to the other party that one party seeks to mediate the dispute.
- (3) Arbitration. If negotiation and mediation fail to resolve the dispute, or the time frames established for negotiation or mediation pass, a controversy or claim arising out of this Agreement, or the breach of this Agreement, shall be settled by arbitration pursuant to the Uniform Arbitration Act, NMSA, § 44-7A-1 and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- (4) Time periods. The time periods established in this Paragraph 16 may be amended by mutual agreement of the parties.

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 NMHIX.

19. **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 Agreement's term and effect and retain them for a period of ten (10) years from the date of completion of this Agreement. The records shall be subject to inspection by NMHIX and the Department of Finance and Administration, and may be disclosed by NMHIX to third parties as required or allowed by law.

B. NMHIX shall have the right to audit billings both before and after payment, including but not limited to a financial statement audit performed in accordance with government accounting standards for financial reporting. The Contractor agrees to be subject to findings and sanctions assessed as a result of any audit and will make repayment of any excessive or illegal payments by NMHIX. Payment under this Agreement shall not foreclose the right of NMHIX to recover excessive or illegal payments.

20. **Indemnification.**

A. **General Indemnification.** Contractor shall defend, indemnify and hold harmless NMHIX, its Board of Directors, employees, officers and agents, and the State of New Mexico, from all third party actions, proceedings, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which are caused by the negligent act or negligent failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, to the extent resulting in injury or damage to persons or personal 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 Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor for which Contractor is obligated to indemnify NHMIX, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of NMHIX and the Risk Management Division of the New Mexico General Services Department by certified mail.

B. **Indemnification for Professional Acts, Errors, or Omissions.** Except for professional acts, errors or omissions that are the result of established gross negligence or willful or wanton conduct on the part of the Contractor or its employees, agents, representatives or subcontractors, the General Indemnification shall not apply to professional acts, errors or omission unless covered by Contractor's Professional Liability insurance.

21. **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.

22. **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.

23. **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 NMHIX:

To the Contractor:

24. **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.

25. **Succession.**

This Agreement shall extend to and be binding upon the successors and assigns of the Parties.

26. **Default/Breach.**

In case of default or breach by the Contractor, for any reason whatsoever, NMHIX may procure the goods or services from another source and hold Contractor responsible for any resulting excess costs and/or damages, including, but not limited to, direct damages, indirect damages, consequential damages, and special damages, and NMHIX may also seek all other remedies under the terms of this Agreement and under law or equity.

27. **Equitable Remedies.**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause NMHIX irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for NMHIX, and the Contractor consents to NMHIX's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. NMHIX's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that NMHIX may have under applicable law, including, but not limited to, monetary damages.

28. **Default and Force Majeure.**

NMHIX reserves the right to cancel all or any part of any orders placed under this Agreement without cost to NMHIX, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by NMHIX due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors

due to any of the above, unless NMHIX shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of NMHIX provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

29. **Contractor Personnel.**

A. **Key Personnel.** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of NMHIX. Key personnel are those individuals considered by NMHIX to be mandatory to the work to be performed under this Agreement. Key personnel shall be: \_\_\_\_\_.

B. **Personnel Changes.** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by NMHIX. For all personnel, NMHIX reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to NMHIX approval. NMHIX, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. NMHIX reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of NMHIX, meeting NMHIX's expectations.

30. **Insurance.**

A. **Professional Liability.** For the Contractor and all of the Contractor's employees who are to perform professional services under this Agreement, the Contractor shall keep in full force and effect, Professional Liability insurance for any professional acts, errors or omissions. Such policy shall provide a limit of not less than \$5,000,000 per claim and \$5,000,000 annual aggregate. The Contractor shall ensure both that: (1) the policy retroactive date is on or before the date of commencement of the first work performed under this Agreement; and (2) the policy will be maintained in force for a professionally reasonable period of time after substantial completion of the project or termination of this Agreement, whichever occurs last. If professional services rendered under this Agreement include work relating to environmental or pollution hazards, the Contractor's policy shall not contain exclusions for those activities.

C. Contractor shall maintain in force during the entire term of this Agreement the following insurance coverages, naming NMHIX as additional insured:

- Workers Compensation (including accident and disease coverage) at the statutory limit. Employers liability: \$100,000.

- Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
  - Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
  - Property damage or combined single limit coverage: \$1,000,000.
  - Automobile liability (including non-owned automobile coverage): \$1,000,000.
  - Umbrella: \$1,000,000.

Contractor shall maintain the above insurance for the term of this Agreement and name NMHIX as an additional insured and provide for reasonable advance cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

C. The Contractor shall not begin the services required under this Agreement until it has: (a) obtained, and upon NMHIX's request provided to NMHIX, insurance certificates reflecting evidence of all insurance required herein; however, NMHIX reserves the right to request, and the Contractor shall submit, copies of any policy upon reasonable request by NMHIX; and (b) confirmed that all policies contain the specific provisions required. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement may be treated as a material breach of Agreement by NMHIX.

Further, the Contractor shall not modify any policy or endorsement thereto which increases NMHIX's exposure to loss for the duration of this Agreement.

The Contractor shall provide an endorsement that the insurer waives the right of subrogation against NMHIX and its respective officials, officers, employees, agents, volunteers and representatives.

D. Cancellation. Except as provided for under New Mexico law, all policies of insurance required hereunder must provide that the NMHIX is entitled to reasonable written notice period of cancellation or non-renewal of the policy or policies. Cancellation provisions in insurance certificates shall include reasonable cancellation provisions, in line with insurance industry standards.

E. Insurer Requirements. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have rated "A-" and "V" or better by the A.M. Best Key Rating Guide, that are authorized to do business in the State of New Mexico, and that have been approved by the NMHIX. The NMHIX will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of New Mexico.

F. Deductibles. All deductibles or co-payments on any policy shall be the responsibility of the Contractor.

G. All policies required herein, except for the Workers Compensation policy and Professional Liability policy, are primary and non-contributory to any insurance that may be carried by the NMHIX and its officials, officers, employees, agents, volunteers and representatives, as reflected in an endorsement which shall be submitted to the NMHIX. The Contractor shall obtain an endorsement from the Workers Compensation and Professional Liability insurers that the insurers waive the right of subrogation against NMHIX and its respective officials, officers, employees, agents, volunteers and representatives.

H. The Contractor agrees that for the duration of this Agreement, and for a period of three years after substantial completion of the project or termination of this Agreement, there will be no changes or endorsements to the above policies that increase the NMHIX's exposure to loss.

I. The NMHIX reserves the right, from time to time, to review the Contractor's insurance coverage, limits, and deductible and self-insured retentions to determine if they are acceptable to the NMHIX. The NMHIX will reimburse the Contractor for the cost of the additional premium for any coverage requested by the NMHIX in excess of that required by this Agreement without overhead, profit, or any other markup.

J. The Contractor may obtain additional insurance not required by this Agreement.

31. **New Mexico Tort Claims Act**

Any liability incurred by NMHIX in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*, as amended. NMHIX and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

32. **Communications**

NMHIX desires to maintain a consistent and coherent public message regarding the work of the NMHIX, its contracting partners, and the contractual relationship between the NMHIX and its contracting partners. Contractor expressly acknowledges the NMHIX's interest in this regard and agrees that the Contractor shall not communicate with the media or the public regarding this Agreement or the work performed pursuant to this Agreement, during the term of the Agreement and for a reasonable period of time following the termination of this Agreement, without requesting and receiving authorization from the NMHIX to engage in the communications. Contractor also agrees to comply with the NMHIX Communications Policy, as it may be amended from time to time.

33. **Compliance with Law**

The Contractor agrees to comply with all laws and regulations that are applicable to this Agreement and the Contractor's Scope of Work now enacted or that become effective during the term of this Agreement, including but not limited to, laws and regulations enacted pursuant to the Affordable Care Act.

34. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below or August 1, 2021, whichever is later. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency: New Mexico Health Insurance Exchange

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Legal Counsel – Certifying legal sufficiency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Agency's Chief Financial Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Contractor

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 (NM CRS): \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Taxation and Revenue Department

**NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny  
taxability statements contained in this contract.**

This Agreement has been approved by the State of New Mexico Contracts Review Bureau:

By: \_\_\_\_\_  
Contracts Review Bureau  
State of New Mexico

Date: \_\_\_\_\_

**APPENDIX D**  
**COST PROPOSAL**

<b>Deliverable/Description</b>	<b>Quantity (# of Units)</b>	<b>Cost per “Unit”</b>	<b>Total Cost</b>	<b>Estimated Effort (in hours)</b>
Phase I – Position Sourcing				
Phase II – Position Screening				
Phase III – Interviewing				
Phase IV – Reference Checks and Hiring				

The proposal must include all fees and charges for the provision of services, including all labor, materials, equipment, transportation, configuration, travel, training and profit to provide the goods and/or services described in Section IV.A.

## APPENDIX E

### LETTER OF TRANSMITTAL FORM

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.31).  
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE  
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!  
(N/A, None, Does not apply, etc. are acceptable responses.)**

**RFP#:2022.003**

**1. Identify the following information for the submitting organization:**

<b>Offeror Name</b>	
<b>Mailing Address</b>	
<b>Telephone</b>	
<b>FED ID#</b>	
<b>NM CRS#</b>	

**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*
<b>Name</b>			
<b>Title</b>			
<b>E-mail</b>			
<b>Telephone</b>			

\* 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. Use of subcontractors (Select one):**

- No subcontractors will be used in the performance of any resultant contract, OR  
 The following subcontractors will be used in the performance of any resultant contract:

\_\_\_\_\_  
 (Attach extra sheets, as needed)

**4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractor listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)**

\_\_\_\_\_  
 (Attach extra sheets, as needed)

**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.

\_\_\_\_\_, 20\_\_\_\_  
Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)

## **APPENDIX F**

### **ORGANIZATIONAL REFERENCE QUESTIONNAIRE**

New Mexico Health Insurance Exchange, as a part of the RFP process, requires Offerors to list a minimum of three (3) organizational references in their proposals. If there are subcontractors, there must be two references for each subcontractor. 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. The business reference, if it chooses to respond, is required to submit its response to the Organizational Reference Questionnaire directly to Aryn Fitzwater at RFP@nmhix.com by June 13, 2022 at 5:00 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 No. 2022.003**  
**ORGANIZATIONAL REFERENCE QUESTIONNAIRE**  
**FOR:**

\_\_\_\_\_  
(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the New Mexico Health Insurance Exchange via email at:

Name: Aryn Fitzwater, Procurement Manager  
Address: 7601 Jefferson St. NE, Ste. 120, Albuquerque, NM 87109  
Telephone: 505.314.5215  
Email: RFP@nmhix.com

no later than June 13, 2022, 5:00 p.m. MDT, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the **Procurement Manager** at **RFP@nmhix.com**. When contacting the Procurement Manager, please be sure to include the Request for Proposal number listed at the top of this page.

<b>Organization providing reference</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number(s)</b>	
<b>Contact e-mail address</b>	
<b>Project description</b>	
<b>Project dates (start and end dates)</b>	
<b>Technical environment for the project</b> (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 vendor'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 hard-copy materials produced by the vendor?

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

COMMENTS:

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

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

COMMENTS:

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

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

Name: \_\_\_\_\_ Rating:

COMMENTS:

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

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

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

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