



**THE NEW MEXICO HEALTH INSURANCE EXCHANGE  
EMERGENCY SOLICITATION OF PROPOSALS FOR  
INTERIM MANAGEMENT SERVICES**

NMHIX Procurement No. 2022.002  
Release Date: Monday, April 11, 2022  
Proposals Due: Sunday, April 17, 2022

## **I. BACKGROUND AND PURPOSE**

The New Mexico Health Insurance Exchange (“beWellnm”) solicits proposals from qualified contractors to serve as the Interim Management Services Organization of beWellnm and act as the interim administrative lead for the New Mexico State-based Health Insurance Exchange (SBE).

The Interim Management Services Organization is being procured on an emergency basis\* to ensure that beWellnm is prepared to successfully navigate the following:

1. The end of the current federal public health emergency (PHE) related to the COVID-19 pandemic. An estimated 90,000 New Mexicans will lose Medicaid coverage when the PHE is lifted in July 2022, and many of them will be eligible for coverage through the Exchange.
2. Open Enrollment for plan year 2023, including the successful implementation of the New Mexico Health Care Affordability Fund.

Offerors should have a team of personnel with experience and familiarity with SBE operations, Medicaid, project management, enrollment management, and vendor management.

“Offeror” for purposes of this procurement means any person, corporation, or partnership who chooses to submit a proposal.

\*This procurement is being conducted on an emergency basis pursuant to NMSA 1978 §13-1-127 and is not being conducted pursuant to NMSA 1978 §§13-1-103 through 13-1-122.

## **II. PROCUREMENT MANAGER**

The NMHIX Procurement Manager is:

Name: Natasha Romero, Procurement Manager  
Address: 7601 Jefferson Street N.E., Suite #120, Albuquerque, NM 87109  
Telephone: (505) 314-5250  
Email: nromero@nmhix.com

Any inquiries or requests regarding this procurement should be submitted, in writing only, to the Procurement Manager, at the email address listed above. Only the Procurement Manager has the authority to respond on behalf of the New Mexico Health Insurance Exchange.

## **III. SCOPE OF WORK**

### **Essential Duties, Functions and Responsibilities**

The Interim Management Services Organization will be responsible for the following:

1. Assume short-term responsibility for oversight and facilitation of beWellnm day-to-day operations.
2. Ensure the successful transition to an enrollment into a Qualified Health Plan offered on the Exchange by eligible New Mexicans who no longer qualify for Medicaid after the

expiration, on July 31, 2022, of the federal Families First Coronavirus Response Act continuous coverage requirement (commonly referred to as the unwinding of the public health emergency (PHE)).

3. Oversee the successful implementation of the New Mexico Health Care Affordability Fund (HCAF) requirements for Open Enrollment for plan year 2023.
4. Determine the current state of Exchange operations, including identification of any defects and/or lack of readiness in areas critical to a successful PHE unwinding and implementation of the Health Care Affordability Fund for Open Enrollment for plan year 2023, and Open Enrollment.
5. Implement solutions to remedy and resolve any defects and address any lack of readiness identified pursuant to item 4, above, including in the following areas:
  - Exchange technology systems
  - Communications and marketing
6. As necessary to successfully navigate the unwinding of the PHE and the implementation of the Health Care Affordability Fund requirements for Open Enrollment for plan year 2023, make recommendations to the Board of Directors regarding improvement of the performance of the New Mexico individual marketplace.
7. Manage vendor contracts and compliance to ensure Service Level Agreements are met.
8. Develop and implement a comprehensive stakeholder engagement plan.
9. Facilitate a smooth transition of Exchange leadership to the new CEO at the end of the contract period.
10. It is anticipated that the contract duration will be for a period of nine to ten months, or until the Board of Directors determines that the emergency condition has been sufficiently managed.

\*NOTE: BeWellnm considers the protection of any proprietary information of utmost importance, and is committed to ensuring that any proprietary information belonging to existing vendors be protected. Therefore, organizations whose involvement would represent a violation of that protection will not be considered. Offerors should explain how they will protect the existing vendors' proprietary information.

#### **IV. PROPOSAL DETAILS AND DELIVERY**

Proposals should be delivered electronically to [RFP@nmhix.com](mailto:RFP@nmhix.com) by 5:00 p.m. MDT on Sunday, April 17, 2022. No hard copies are required.

The proposal must include a cover letter signed by an officer of the organization or representative of the Offeror who has authority to execute a contract if the Offeror is awarded a contract by the Board of Directors. In addition, the cover letter must include the following:

1. The person who is responsible for the Proposal and who will be beWellnm's point of contact;
2. The responsible person's address, phone number, and email address;
3. Attest to Offeror's eligibility to respond to the Solicitation;
4. Include the certification required in Section (V)10 of this Solicitation.

Offeror must demonstrate in as much detail as possible its ability to perform the services and specifications set forth in Section III, Scope of Work. Offeror must describe Offeror's qualifications, relevant experience, key personnel, and plan for accomplishing the objectives of this procurement. Proposals should be no more than 10 pages of narrative, separate from attachments or exhibits required by this Solicitation or that Offeror believes are relevant and will be helpful to beWellnm's evaluation of the proposal.

Offeror must also submit a detailed cost proposal, identifying all fees and costs (including applicable taxes) anticipated in connection with provision of the services.

## **V. ANTICIPATED TIMELINE**

This procurement is being conducted on an emergency basis. The Procurement Manager will make every effort to adhere to the following anticipated timeline. **The selected contractor should be prepared to start work immediately upon finalization of the contract.**

Solicitation of Proposals released: April 11, 2022

Proposals due: April 17, 2022 (5:00 p.m., electronically)

Proposal evaluations: April 18, 2022 – April 20, 2022

Contract awarded: as soon as possible after evaluations are complete

Contract start date: immediately upon finalization of contract

## **VI. GENERAL REQUIREMENTS AND ADDITIONAL INFORMATION**

### **1. Prime Contractor Responsibility**

Any contractual agreement that may result from this Solicitation 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 Solicitation of Proposals. The Exchange will make payments to only the prime contractor.

### **2. Subcontractors/Consent**

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 this agreement. 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. The Contractor should 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.

### **3. Disclosure of Proposal Contents**

The contents of all proposals and documents pertaining to the proposals will be available for public inspection, *except* for proprietary or confidential material as follows:

- *Proprietary and Confidential information is restricted to:*
  - confidential financial information concerning the Offeror's organization; and
  - information that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, §§57-3A-1 through 57-3A-7, NMSA 1978.
  - An additional but separate redacted version of Offeror's proposal 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.

#### **4. No Obligation**

This solicitation in no manner obligates the 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 Solicitation of Proposals at any time. No Offeror shall acquire any legal or equitable rights through this Solicitation of Proposals. This Solicitation of Proposals 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.

#### **5. Sufficient Funding**

Any contract awarded as a result of this Solicitation of Proposals 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.

#### **6. 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.

## **7. 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 Solicitation for Proposals or concerning the Exchange's failure, negligent or otherwise, to provide the Offeror with pertinent information in this Solicitation of Proposals.

## **8. Confidentiality**

Any confidential information provided to, or developed by, the Contractor in the performance of the contract resulting from this Solicitation of Proposals 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.

## **9. Conflict of Interest**

By submitting a proposal to this Solicitation of Proposals, 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 Solicitation of Proposals. 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.

Offeror shall affirmatively state in its proposal that it has no disqualifying conflict of interest, and if Offeror has an existing conflict, potential conflict, or matter that may pose an appearance of conflict, Offeror shall describe the circumstances regarding the matter and why Offeror believes the matter is not a barrier to its ability to perform the solicited services.

## **10. Campaign Contribution Disclosure Form**

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, Appendix A, 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.

## **11. Contract Terms and Conditions**

The contract between NMHIX and the selected vendor will follow a format specified by NMHIX and is expected to contain the terms and conditions similar to those set forth in the Contract Template, attached hereto as Appendix B. However, NMHIX reserves the right to

negotiate any and all contract terms and conditions, including additional terms and conditions, with any Offeror.

## Appendix A

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (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 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 B

### (Sample Contract Template)

(NAME OF AGENCY)

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

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

IT IS AGREED BETWEEN THE PARTIES:

**1. Scope of Work.**

The Contractor shall perform the following work:

**2. Compensation.**

A. 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 the Agency 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 the Agency 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 Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work, and to approval by the GSD/SPD. All invoices **MUST BE** received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date **WILL NOT BE PAID.**

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

**3. Term.**

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

**4. Termination.**

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

B. Notice; Agency Opportunity to Cure.

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

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, "Funding," of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency'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 the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency 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 services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**7. Assignment.**

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

**8. Subcontracting.**

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

**9. Release.**

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. Confidentiality.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

**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 anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

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

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee

of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

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

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

**13. Amendment.**

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

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

**14. Merger.**

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

**15. Penalties for violation of law.**

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

**16. Equal Opportunity Compliance.**

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

**17. Applicable Law.**

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

**18. Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers



Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**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.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

**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 the Agency:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

**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.

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

By: \_\_\_\_\_  
Agency

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

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

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

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

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

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

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

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

ID Number: 00-000000-00-0

By: \_\_\_\_\_

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

Taxation and Revenue Department

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

By: \_\_\_\_\_

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

GSD/SPD Contracts Review Bureau