



New Mexico Medical Insurance Pool

**Request for Proposal: #2024001
For
Executive Director**

Proposal Due: July 15, 2024

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NEW MEXICO MEDICAL INSURANCE POOL

Request for Proposals for Executive Director

I. INTRODUCTION

PURPOSE

The New Mexico Medical Insurance Pool (“NMMIP” or “Pool”) seeks an Executive Director with an appropriate level of support staff to manage and guide the Pool’s organizational activities for a period of up to four years. The initial contract will be for one year beginning on January 1, 2025, but the contract may be annually renewed by the NMMIP Board for up to three additional years.

BACKGROUND

NMMIP is a non-profit entity created by the New Mexico Legislature in 1987 (Sections 59A-54-1 to 59A-54-21 NMSA) to offer health care coverage to New Mexico residents who are denied adequate health insurance or are considered uninsurable.

All insurers (as defined in the Act) authorized to issue or provide health insurance in New Mexico are members of the Pool. Pool losses (amounts paid for services to insured minus premiums, grants, and other revenue) are covered by Pool members via a periodic assessment, as provided by the Act and the Plan of Operation.

The Pool is governed by a Board of Directors (“Board”). The Board selects one or more administrative contractors for the Pool through competitive bidding, supplemented by a negotiation process, if necessary. The current administrative contracts are as follow:

- Claim administration, enrollment and customer service – 90 Degree Benefits
- Provider network – Value Health Benefit Administrators via subcontracts with PHCS and Zelis
- Pharmacy benefit manager – Value Health Benefit Administrators via a subcontract with Elixir
- Care management – Ensemble Health
- Utilization management -- KEPRO

The Pool currently insures about 4,000 individuals (as of April 2024). Over the next four years, the number of insured may increase or decrease, depending largely on potential policy changes on the federal and state levels.

The Board has determined that it is in the best interest of NMMIP to utilize an Executive Director, hired as an independent contractor, to enhance program effectiveness and efficiency, manage administrative contracts, monitor performance, coordinate with the Board and other contractors to address day-to-day and strategic issues, and provide financial accountability. The Executive Director is a single person, but the scope and complexity of the tasks assigned to the Executive Director requires the Executive Director to be assisted by additional staff. It is expected that applicants will propose a staff of appropriate size

and structure to successfully fulfill all the requirements of the contract and carry out the mission of the Pool, with staffing adjustments over the four-year period as needed due to changes in the number of policy holders and initiatives approved by the Board. The current Executive Director contract is with Delta Consulting.

II. SCOPE OF WORK

This section has two sub-sections. The first describes the basic duties the Executive Director will be expected to perform on an ongoing basis. The second describes important issues that the Executive Director is expected to address during the term of the contract. Applicants will be asked to address both sub-sections in their response to this RFP.

DESCRIPTION OF BASIC DUTIES

A. Responsibilities Related to Applicants and Insureds

- Serves as navigator for applicants and the Pool's insureds by either facilitating their enrollment or continued coverage by the Pool, or by aiming to place the applicant or individual in a public or private insurance plan that provides: 1) benefits equal to or better than those offered by the Pool; 2) at the lowest cost to the insured.
- Promptly responds to all inquiries from applicants, brokers, or the public regarding eligibility, benefits, and enrollment, including research and coordination of response with the administrative contractors and, as necessary, the Board.
- Promptly responds to inquiries from policy holders, including research and coordination of response with the administrative contractors and, as necessary, the Board.
- Coordinates and participates in broker and agent training. Interacts with brokers and agents to facilitate the enrollment of new applicants when necessary.
- Works with contractors to develop, maintain, and improve a Pool website that is effective in communicating information about the Pool and provides functionality that is useful to applicants and enrollees.
- Maintains at least one office in New to permit policy holders to receive face-to-face support and assistance from Executive Director staff.

B. Board Related Responsibilities

- Ensures complete and accurate implementation of Board policies and decisions, within the framework of state and federal statutes, policies, rules, and guidelines.
- Conducts analysis of NMMIP operations and contractor performance. Keeps the Board informed through regular communications and Board meetings of the nature, effectiveness, and cost of NMMIP operations.
- Ensures adequate resources are available to Board members in carrying out their responsibilities

- Coordinates and supports the work of the Board committees, including the RFP Committee when appropriate.
- Coordinates and manages communication among Board members, the administrative contractors, actuary, attorney, auditor, and others.
- Coordinates and manages communication between the Board and outside entities including the Office of the Superintendent of Insurance, the New Mexico Legislature, the New Mexico Health Insurance Exchange, state and federal agencies and departments, the governor's office, and other public officials.
- Provides information and education to the Board regarding current health care issues.
- Coordinates and manages the strategic planning functions of the Board. Proposes specific strategies, which may include expansion of care management and other current programs that will result in an overall reduction in cost of the Pool or improving health care for policyholders.
- Coordinates and manages all Board meetings and retreats, including securing appropriate locations for meetings, providing for food and beverages as needed, arranging for remote video or other off-site participation in meetings, taking and timely distributing accurate meeting minutes, and all other tasks required to ensure productive Board meetings and retreats.
- Receives, on behalf of the Board, all appeal requests, investigating and gathering necessary documentation regarding such request, making recommendations and/or decisions for resolution as directed by the Board, and corresponding with the policy holder regarding such decision.

C. Contracting and Auditing

- Administers, oversees, and manages the contracts between the Board and its administrative contractors for delivery of quality services and cost-effective health care coverage.
- Coordinates with the Pool's legal counsel to ensure administrative contracts are negotiated and executed in a timely manner and include adequate protections for the Pool and its enrollees in terms of performance standards and data security.
- Works with the administrative contractors to facilitate smooth transitions and effective ongoing interactions between them.
- Resolves difficult issues that arise in the day-to-day operation of the Pool and escalates policy issues when appropriate to secure Board input and approval.
- Recommends and coordinates the solicitation and evaluation of new contracts to further ensure delivery of quality services and cost-effective health care coverage in accordance with the statutory charge, plan of operation and current strategic plans.
- Administers, oversees, and manages all other contracts entered by the Board for delivery of quality and cost-effective services, including preparation of RFPs when needed.
- Develops, in coordination with the administrator, all application forms and routine public information materials regarding the Pool including eligibility, enrollment and benefit summaries.

- Ensures that policy documents are kept up to date in accordance with statutory and regulatory requirements and are filed with the Office of the Superintendent of Insurance as required.

D. Program Evaluation

- Coordinates member satisfaction survey efforts including follow-up and improvement recommendations.
- Compares NMMIP financing and operational practices to other similar organizations to ensure access to health insurance.
- Research inquiries from the Board regarding program operation. Hires and oversees consultants, if needed. Uses findings to make recommendations to the Board regarding steps to be taken to improve NMMIP's performance, reduce costs, or improve policy-holders health outcomes.
- Oversees the carrier assessment process conducted by the administrative contractor.

E. Clinical Oversight

- Maintains and oversees a clinical advisor or clinical operations team to monitor, investigate, analyze and improve the care of enrollees.
- Measures and monitors the quality of care management, access, and services provided to enrollees, and identifies opportunities for improvement over time.
- Sets the direction for the Pool's care management program and interacts with the care management and utilization management contractors.

F. Develop and Secure Roles for the Pool in the Healthcare System

- Identify and analyze opportunities with external stakeholders that may benefit from the NMMIP's expertise in the health care system while maintaining the integrity and viability of the pool.
- Identifies sources of funds for the Pool, and, if the Board chooses to seek those funds, prepares applications, manages grant activities, and submits required financial and program reports.
- Analyze current administrative systems and identify opportunities to reduce costs in order to minimize assessments on carriers and the State of New Mexico.

G. Public and Legislative Liaison

- Represents NMMIP and its Board of Directors by direct interaction with the Office of the Superintendent of Insurance, the New Mexico legislature, the New Mexico Health Insurance Exchange ("BeWellNM"), various departments and organizations in the NM executive branch, insurer and provider groups, consumer organizations, CMS, and federal agencies. Performs requested communication and liaison activities with appropriate state and federal agencies and legislative bodies as directed by the Board.

- Represents NMMIP and the Board to the public, the media, the insurance industry, and other external parties, in accordance with the positions established by the Board.
- Recommends and coordinates the solicitation and evaluation of public outreach campaigns including applicable media approaches, if needed.
- Attends appropriate sessions of the New Mexico legislature and its committees.
- Works closely with the contracted lobbyist to provide information as needed to address the impact on the Pool of proposed legislation.

H. Diversity and Inclusion

- Maintains a commitment to diversity and inclusion in employment and hiring practices as well as in day-to-day operations.
- Demonstrates respect and awareness in interactions with the Pool's enrollees, a diverse population that often experience disparities due to nationality, education, citizenship status, health status, race, age, and gender.

DESCRIPTION OF IMPORTANT ISSUES

The Executive Director and its staff are expected to be knowledgeable and experienced with respect to the following important issues and to take an active role in dealing with these issues. This may involve working closely with the Board, insurance carriers, and public officials to address these important issues, and taking action when a policy change is beneficial to the Pool, its enrollees, and the State.

- Growth or Decline in Pool Enrollment. The Executive Director must be prepared to adjust the size of its staff and the scope of its activities in response to challenges arising due to changes in state or federal policies or Board initiatives. The magnitude of possible changes is unknown at this time, but could be significant. The Executive Director will need to ensure that the Board understands the impact of proposed changes and reacts quickly and appropriately to opportunities and threats that those changes may create for the Pool.
- Cost to the State. Pool members' assessments are offset by a tax credit, which represents a cost to the State. There have been efforts in the past to reduce this tax credit, which would impact the sources of revenue for the Pool. If this should occur during the term of the contract, the Executive Director will need to work on the issue with the Superintendent of Insurance, the Legislature, and the Governor to find ways to ensure ongoing financial support for the Pool.
- Access to high quality health care at a reasonable cost. The Board has consistently acted to secure this goal. As directed by the Board, the Executive Director will be expected to participate in efforts to secure access to high quality health care in NM for the maximum number of NM residents, with special emphasis on access for persons with significant or costly health conditions, and for persons who are denied coverage by the New Mexico Health Insurance Exchange, or need coverage outside of open enrollment periods, or who cannot afford adequate health insurance.
- Coverage Expansion Plan. The Health Care Authority is in the process of evaluating the potential development and implementation of a new program that would provide affordable health

insurance coverage to low-income individuals who are not eligible to purchase coverage through BeWellNM due to immigration status. It is possible that the Pool may have a role in developing, implementing, or administering the program, but further information is not yet available. This is an example of the type of initiative that might require the Executive Director to quickly expand staff and accept new responsibilities.

III. GENERAL INFORMATION

CONTRACT TERM

Following award to a successful Offeror, a written contract will be executed between the Offeror and NMMIP. The contract will begin on January 1, 2025. It is the intent of the Board that the contract shall be for an initial term of one year, with an option for up to three one-year renewals or any portion thereof.

OFFEROR QUALIFICATIONS/CONFLICT OF INTEREST

This RFP is open to any Offeror capable of performing the work described in the Scope of Work (Section II) and meeting the Mandatory Specifications (Section VI, Paragraph A), subject to the following stipulations:

- Pursuant to the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 et. seq., an Offeror will have no direct or indirect interest that conflicts with the performance of services covered under this RFP. If Offeror believes that there is a possible conflict of interest, Offeror should fully discuss the possible conflict in its response to this RFP.
- Pursuant to NMSA 1978, §§ 13-19-191, 30-24-2, and 30-41-1, through 30-41-3, an Offeror may not provide or offer bribes, gratuities, or kickbacks to applicable state personnel.
- As determined by the Board the burden is on the Offeror to present sufficient assurances to the Board that the award of the contract to the Offeror shall not create a conflict of interest; and
- Offerors should fully disclose whether the Offeror is able to perform the work solely or will require the assistance of sub-contractors, or other staff not directly employed by the Offeror. If sub-contractors or other staff not directly employed by the Offeror are needed, the Offeror should include a detailed description of the qualifications of the additional staff, and all costs associated with the use of additional staff.

PROCUREMENT MANAGER

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

John B Arango
USPS: PO Box 889
FedEx or UPS (Only—do not use other delivery services): 1452 Highway 313
Algodones, NM 87001

Phone: 505-379-4133 (cell) Email: jarango@nmia.com

Any inquiries or requests regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other NMMIP contractors, board members or representatives do not have the authority to respond on behalf of NMMIP.

TERMINOLOGY

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

- **ACA.** The Patient Protection and Affordable Care Act.
- **Board.** The NMMIP Board of Directors.
- **Clinical Operations Team.** A team guided by a medical professional/clinical advisor with a strong background and interest in pursuing value-based care and optimizing care and case management efforts. Other member of the Team could include representatives from contracting, case management, the pharmacy benefits manager, data analysis and NMMP administrative staff.
- **Close of Business.** 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.
- **CMS.** The Centers for Medicare and Medicaid Services, which is part of the Federal Health and Human Services Department
- **Contract.** A written agreement for the procurement of items of tangible personal property or services.
- **Contractor.** A successful Offeror who enters into a binding contract.
- **Day.** Business day unless otherwise specified.
- **Determination.** The written documentation of a decision by the Procurement Manager including findings of fact supporting a decision. A determination becomes part of the procurement file.
- **Desirable.** The terms “may,” “can,” “should,” “preferably,” or “prefers” identify a desirable or discretionary item or factor (as opposed to “mandatory”).
- **Evaluation Committee.** A body appointed by the Board to perform the evaluation of Offeror proposals.
- **Evaluation Committee Report.** A document prepared by the Procurement Manager for submission to the Board for contract award. It contains all written determinations resulting from the procurement.
- **Finalist Offeror.** An Offeror who meets all the mandatory specifications of this RFP and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
- **Health Care Authority.** A new agency set to launch on July 1, 2024, the result of merging the New Mexico Human Services Department, the State Employee Benefits team from the General Services Department, the Developmental Disabilities Supports Division and Division of Health

Improvement from the New Mexico Department of Health, and the Health Care Affordability Fund from the Office of Superintendent of Insurance.

- **Mandatory.** The terms “must,” “shall,” “will,” “is required,” or “are required,” identify a mandatory item or factor (as opposed to “desirable”). Failure to meet a mandatory item or factor will result in the rejection of the Offeror’s proposal.
- **Medicaid.** The state medical assistance program in New Mexico operated by the Medical Assistance Division of the Human Services Department as authorized by the New Mexico Public Assistance Act and in compliance with the federal Social Security Act.
- **Medical Insurance Pool Act [59A-54- NMSA 1978].** The NM statute creating and controlling the operations of the New Mexico Medical Insurance Pool.
- **Most Advantageous Offeror.** The organization selected by the Board to enter into negotiations potentially leading to the award of a contract for the Executive Director.
- **Offeror.** Any person, corporation, or partnership who chooses to submit a proposal.
- **Potential Offeror.** Any organization that submits a Letter of Intent.
- **Procurement Manager.** The person or designee authorized by the Board to manage or administer a procurement requiring the evaluation of competitive sealed proposals.
- **Request for Proposals (RFP).** All documents, including those attached or incorporated by reference, that are used for soliciting proposals.
- **Request for Proposals Committee.** A group of Board members designated by the Board to prepare and issue Requests for Proposals.
- **Responsive Offer or Responsive Proposal.** An offer or proposal which conforms in all material respects to the requirements set forth in the RFP. Material respects of an RFP include, but are not limited to, price, quality, quantity, or delivery requirements.
- **Responsive Offeror.** An Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its 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.
- **State.** The State of New Mexico.
- **Subcontract.** A written agreement between a contractor and a third party, or between a subcontractor and another subcontractor, to provide services.

IV. CONDITIONS GOVERNING THE PROCUREMENT

SEQUENCE OF EVENTS

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

Action	Responsibility	Date
1. Issue RFP	NMMIP	5/31/24

Action	Responsibility	Date
2. Deadline to Submit Questions	Potential Offerors	6/15/24
3. Response to Written Questions /RFP Amendments	Procurement Manager	6/20/24
4. Letter of Intent	Potential Offerors	7/1/24
5. Submission of Electronic Proposal	Offerors	7/15/24
6. Submission of Hardcopy Proposal	Offerors	7/22/24
7. Proposal Evaluation	Evaluation Committee	7/16/24 through 8/22/24
8. Interviews, if determined to be necessary	Evaluation Committee	Week of 8/12/24
9. Selection of Most Advantageous Offeror	Board	8/23/24
10. Contract Negotiation	Board member or designee	Until contract signed
11. Announcement of Contract Award	Board	9/30/24
12. Contract Effective Date		1/1/2025

EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown above.

- Issue RFP.** This RFP is being issued by NMMIP. Potential Offerors may obtain a copy of the RFP from the Procurement Manager. The RFP may also be obtained from the NMMIP website at <http://www.nmmip.org>.
- Deadline to Submit Questions.** Potential Offerors may submit written questions as to the intent or clarity of this RFP until 5:00 p.m. on the date shown in Sequence of Events. All written questions must be emailed to the Procurement Manager. Questions shall be clearly labeled and shall cite the Section(s) in the RFP, or other document that forms the basis of the question.
- Response to Written Questions/RFP Amendments.** Written responses to questions and any RFP amendments will be distributed on or about the date shown in Sequence of Events. The Procurement Manager will make every effort to meet this timeline.
- Letter of Intent.** A Letter of Intent indicating an intent to submit a proposal is mandatory. It should be emailed to the Procurement Manager and should contain 1) a statement of intent to submit a proposal and 2) the Offeror’s contact information. Offerors who submit a Letter of Intent will be notified that the Letter was received and will receive copies of all questions submitted by any Potential Offeror and answers provided by the Procurement Manager, as well as any changes

made to the RFP. A Letter of Intent must be submitted by the date shown in the Sequence of Events. Submission of a Letter of Intent does not obligate a Potential Offeror to submit a proposal.

5. **Submission of Proposals.** All offeror proposals must be received for review and evaluation by the Procurement Manager or his Designee by close of business on the date shown in Sequence of Events, as follows:

- One copy of the full proposal (including a copy of the signed letter of submission) should be prepared in Adobe Acrobat (.pdf) format and emailed to the Procurement Manager no later than 5:00 PM Mountain time on the date shown in Sequence of Events. The emailed proposal may be a single .pdf file or may be separate files for each required section. If a single .pdf file, it should be named (Offeror identifier)(space)(Full ED 2020 Proposal), as in "Smith Full ED 2020 Proposal". If separate files for each required section, each file should be named (Offeror Identifier)(space)(ED 2020) (space)(section name) as in "Smith ED 2020 Desirable Specifications". Receipt of proposals will be acknowledged by email. If the file size is too large to send as an email attachment, you may use one of the available secure internet file sharing services, but include instructions for accessing the file in an email to the Procurement Manager prior to the due date of the electronic proposal.
- A printed copy of the full proposal including the signed letter of submission should be sent by US Postal Service to the Procurement Manager's PO Box, or by express delivery to the Procurement Manager's street address. The printed proposal must be received by the close of business on the Monday following the date of submission shown in "Sequence of Events."

Proposals submitted by email received after the first submission deadline will not be accepted. The date and time of receipt of each emailed proposal will be recorded on each proposal by the Procurement Manager. Proposals submitted by facsimile will not be accepted.

6. **Proposal Evaluation.** The Request for Proposals Committee will act as the Evaluation Committee. The evaluation will begin immediately after proposals are received and end approximately one week before the Board meets to select the most advantageous Offeror. During this time, the Procurement Manager may initiate discussion with Offerors who submit responsive or potentially responsive proposals only for the purpose of clarifying aspects of the previously submitted proposals. Discussions shall not be initiated by the Offerors.

Points will be awarded to each proposal as shown in the chart below. The proposal recommended to the Board by the Committee may not have received the most points.

7. **Interviews.** At the discretion of the Evaluation Committee, interviews may be scheduled with one or more Offeror finalist(s). Interviews will take place on or about the date shown in the Sequence of Events. Interviews may be in person or may be remote.
8. **Selection of Most Advantageous Offeror.** The Procurement Manager will present the Evaluation Committee Report to the Board at a publicly announced meeting. The Board will select the most advantageous offeror for potential award, contingent on successful negotiation.
9. **Contract Negotiation.** Following approval by the Board, contract negotiations will commence with the initially most advantageous Offeror. If mutually agreeable terms cannot be reached within a reasonable period, the Board reserves the right to negotiate a contract with the next most advantageous Offeror without undertaking a new procurement process or canceling the

award. This process of moving to the next most advantageous Offeror without undertaking a new procurement may continue, at the discretion of the Board, until all Offerors on the original list of finalists is exhausted. Contract negotiations are expected to be completed by September 30, 2024.

10. **Contract Award.** The Procurement Manager will give notice of award of the contract after it has been approved by the Board, on or about October 1, 2024. This date is subject to change by the Board.

GENERAL REQUIREMENTS

1. **Termination.** This RFP may be canceled at any time and all proposals may be rejected in whole or in part when the Procurement Manager, after consultation with the Board, determines such an action to be in the best interest of NMMIP.
2. **Use of Electronic Versions of this RFP.** This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Procurement Manager, the version maintained by the Procurement Manager shall govern.
3. **Basis for Proposal.** Only information supplied by NMMIP in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror proposals.
4. **Offeror Qualifications.** The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsive Offeror or fails to submit a responsive offer.
5. **Right to Waive Irregularities.** The Evaluation Committee reserves the right to waive irregularities. The Evaluation Committee also reserves the right to waive any mandatory requirement provided all the otherwise responsive proposals fail to meet the same mandatory requirement and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.
6. **NMMIP Rights.** NMMIP reserves the right to accept all or a portion of an Offeror's proposal.
7. **General Requirements.** NMMIP requires that all Offerors agree to be bound by the General Requirements contained in this Section and in the Sample Contract (Appendix A). If an Offeror objects to any of the General Requirements it must so notify the Procurement Manager. See sub-sections 18 and 19 below.
8. **Acceptance of Conditions Governing Procurement and Other Factors.** Submission of a proposal constitutes acceptance of the Evaluation Factors and points assigned to each Factor as shown in Evaluation Factor Points Summary (Section VI, Paragraph D).
9. **Incurring Cost.** Any costs incurred by the Offeror in preparation, transmittal, and presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.
10. **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. NMMIP personnel will not merge, collate, or assemble proposal materials.

11. **Offerors' Rights to Withdraw Proposal.** An Offeror may withdraw its proposal at any time prior to the day before the board meets to select the most advantageous offeror (See "Sequence of Events"). The Offeror must submit to the Procurement Manager a written withdrawal request signed by the Offeror's duly authorized representative.
12. **Proposal Offer Firm.** Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after the due date for the receipt of a best and final offer, if one is solicited
13. **Contractor Responsibility.** Any contract that may result from this RFP shall specify that the contractor is solely responsible for fulfillment of the contract with NMMIP. NMMIP will make payments only to the contractor.
14. **Subcontractors.** Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. The contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.
15. **Disclosure of Proposal Contents.** Proposals will, to the extent permitted by applicable law, be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material identified by Offeror as proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements.
 - The price of services offered shall not be designated as proprietary or confidential information.
 - Proprietary or confidential data shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal.
 - If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the request and make a written determination that specifies which portions of the proposal will be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed.
16. **No Obligation.** This procurement in no manner obligates NMMIP to use any proposed professional services until a valid written contract is awarded.
17. **Governing Law.** This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.
18. **Contract Terms and Conditions.** The contract between NMMIP and a contractor will be negotiated between NMMIP and the most advantageous Offeror. It will be similar to the Sample Contract attached as Appendix A. NMMIP reserves the right to negotiate provisions in addition to, or different than, those in Appendix A. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal (but not the consultant's report attached to this RFP) will be incorporated into and become part of the contract.

19. **Offeror’s Objection to Terms and Conditions.** Should an Offeror object to any of NMMIP’s terms and conditions, as contained in this Section or in Appendix A, that Offeror must propose specific alternative language.

The Procurement Manager, after consultation with the Evaluation Committee may or may not accept the alternative language. General references to the Offeror's terms and conditions, or attempts at complete substitutions, are not acceptable to NMMIP 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.

20. **Offeror’s Additional Terms and Conditions.** Offerors that propose additional terms and conditions to those listed in this Section or in the Sample Contract (Appendix A) must submit with its proposal a complete set of those additional terms and conditions.

Any proposed additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Offeror and Procurement Manager, and/or the Evaluation Committee, and /or the Board and/or NMMIP’s attorneys. Those proposed additional terms and conditions shall not be an opportunity to amend the Offeror's proposal.

21. **Change in Contractor Representatives.** The Board and/or Evaluation Committee reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Board or Evaluation Committee, meeting NMMIP’s needs adequately.
22. **Notice.** New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks. Offerors will be required to attest to their compliance with these requirements. NMMIP is subject to the terms of the New Mexico Procurement Code, except as otherwise provided in the Medical Insurance Pool Act.
23. **Right to Publish.** Throughout the duration of this procurement process and contract term, potential Offerors, Offerors, and contractors must secure from the Procurement Manager or the Board written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror’s proposal or termination of the contract.
24. **Confidentiality.** Any confidential information provided to, or developed by, the contractor in the performance of services under the contract resulting from this RFP shall be kept confidential and shall not be published or made available to any third party individual or organization by the contractor without the prior written approval of the Board. All proposals will be kept confidential until a contract is awarded. At that time, all proposals and documents pertaining to the proposal will be open to the public, except for material that is proprietary or confidential. The Purchasing Agent will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “proprietary” or “confidential” subject to the following requirements.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, 57-3A-1 to

57-3A-7 NMSA 1978. The price of products offered, or the cost of services proposed shall not be designated as proprietary or confidential information.

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

V. RESPONSE FORMAT AND ORGANIZATION

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

NUMBER OF RESPONSES

Offerors shall submit one (1) proposal.

NUMBER OF COPIES

Offerors shall provide one email (.pdf format) and one printed copy of their proposal to the locations specified, on or before the closing date and time for receipt of proposals. Each version of the proposal shall be formatted for standard 8 ½" x 11" paper. The printed version shall be placed within a binder with tabs delineating each section. The pages should generally have one-inch margins and font size shall be no smaller than Times New Roman 12. The Offeror shall not distribute its proposal to any entity not specified in this RFP.

PROPOSAL ORGANIZATION AND ORDERING

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

- Signed Letter of Transmittal
- Table of Contents
- Executive Summary
- Response to Mandatory Specifications
- Response to Desirable Specifications
- Response to Terms and Conditions
- Offeror's Additional Terms and Conditions
- One-year line item budget
- Curriculum Vitae of key personnel and sub-contractors (if any).
- Attachments as specified in sub-section 10, below (only-no others allowed).

Within each section of its proposal, Offerors should address the items in the order in which they appear in this RFP. Do not provide any other material or attachments. If additional information is needed, Offeror will be contacted by the Procurement Manager.

1. **Letter of Transmittal.** Each proposal must be accompanied by a letter of transmittal. The letter of transmittal MUST:
 - Identify the submitting organization.
 - Identify the name, title, telephone numbers, and e-mail address of the person(s) authorized by the organization to negotiate and contractually obligate the organization.
 - Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification.
 - Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section IV.
 - Acknowledge receipt of all amendments to this RFP.
 - Be signed by the person authorized to contractually obligate the organization.
2. **Table of Contents.** The table of contents must contain a list of all sections of the proposal and the corresponding page numbers.
3. **Executive Summary.** The executive summary should be no more than two (2) pages and should provide the Evaluation Committee with an overview of the technical and business features of the proposal. This material will not be used in the evaluation process but may be used in public notifications regarding the successful Offeror's selection.
4. **Response to Mandatory Specifications.** The Mandatory Specifications are in Section VI.A of this RFP. Offerors must explicitly respond to each numbered specification in the order in which they appear in this Section.
5. **Response to Desirable Specifications.** The Desirable Specifications are in Section VI.B of this RFP. The information contained in this section will be key to the evaluation of proposals. Offerors must respond in the form of a thorough narrative to each numbered specification in the order in which they appear in this section. The Offeror must identify the question being answered in its response to that question.
6. **Response to Terms and Conditions.** The Offeror shall explicitly indicate acceptance of the General Requirements (Section IV) and the Contract terms and conditions in Exhibit A - Sample Contract attached as Appendix A. Should the Offeror object to any of NMMIP's terms and conditions, the Offeror must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. If Offeror has no objections, it shall so state in its response to the RFP.

7. **Offeror’s Additional Terms and Conditions.** Should the Offeror wish to add to any of the NMMIP’s terms and conditions, the Offeror must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording. If Offeror has no additional terms, it shall so state in its response to the RFP.
8. **One Year Line Item Budget.** See Section VI.B.5 below.
9. **Curriculum Vitae.** As provided in Section VI.B.2 attach resumes of:
 - The Executive Director.
 - The Deputy Executive Director.
 - Other key staff with insurance or related experience.
 - Other staff in key positions.
 - Individuals with proposed sub-contractors
10. **Attachments.**
 - Offerors **must** attach a completed Campaign Contribution Disclosure Form.
 - If your organization has a certificate from the New Mexico State Taxation and Revenue Department showing that it is either an in-state or New Mexico veteran-owned business, attach a copy of the certificate.

VI. SPECIFICATIONS

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

A. MANDATORY SPECIFICATIONS

Failure to respond to a mandatory specification will result in the disqualification of the proposal as non-responsive. No points are awarded in the evaluation of this section. Rather, it is “pass/fail”: either the Offeror provides the required information, or the application is rejected with no further review.

1. **Health Insurance Experience:** The Offeror must explicitly state that it will have at least two staff members (including the person designated as Executive Director) with at least three years’ health insurance experience. This experience may be:
 - a. in commercial health insurance (as a manager of, or consultant or counsel to, an insurer, or in a state agency regulating health insurance); or
 - b. In a high-risk pool or in a program offering health care coverage to individuals who are denied adequate health insurance or are considered uninsurable; or
 - c. in a management position in a Health Insurance Exchange at the state level; or
 - d. in a management position in a state Medicaid program.

In this subsection, **explicitly state** that you will have at least two staff members with the required experience. Describe the experience of these two required staff members in VI.B.2 - Required Positions below.

2. **Assurances**: In this section of its proposal Offeror must explicitly state that:
 - a. It will have no conflicts of interest as described in Section III.
 - b. Its sub-contractors, if any, will have no conflicts of interest as described in Section III.
 - c. All records, files, data bases, and reports associated with this program are, and will remain, the property of the Board and are to be turned over without any cost to any successor Executive Director or to the Board, as directed by the Board; and will provide the Board or its designee with access to all such records during normal business hours.
 - d. It will maintain at least one office in New Mexico with sufficient staff to be able to provide face-to-face assistance to applicants and support to policy holders.

B. DESIREABLE SPECIFICATIONS

The Evaluation Committee will analyze submissions guided by the following considerations.

1. **Organization** (15 points)

- a. Briefly describe the history of your organization, including its tax status.
- b. Has your organization or one of its components ever filed for bankruptcy, been the subject of:
a) a formal complaint by a job applicant or employee, or b) a regulatory action by a local, state, or federal agency? If yes, describe the nature of the complaint or action and how the matter was closed.
- c. List all other clients, contracts and/or projects that will be in force in 2025 or later, and briefly describe the role your organization carries out for each client, contract, or project. Identify the clients (with contact information) that the Procurement Manager or his designee may contact to obtain information about your organization's effectiveness.
- d. Provide an organizational chart of your organization, including all positions and responsibilities. How many staff do you currently employ? Indicate which of these staff will be assigned to the NMMIP Executive Director on a full time or part-time basis if you are the successful bidder.
- e. Provide audited financial reports (or unaudited if audited financials are not available) for the calendar years 2022 and 2023.
- f. List all current offices in New Mexico—city, physical address, number of current staff (number full-time, number part-time). Indicate if each office is staffed daily or if employees work remotely. Which office or offices will be used by the Executive Director? Which offices will be able to offer face-to-face assistance or support to policy holders? Describe the facilities, methods of communication, and office equipment that will be available for use by the Executive Director in each office. If you do not have an office in New Mexico, briefly describe where the New Mexico office(s) will be located, what staff will be assigned to this (these) office(s), and show the date when the office(s) will be fully operational.
- g. Describe how NMMIP information and records will be safeguarded. In particular, describe how any policy-holders' health information will be protected. Describe steps the organization has and will take to protect itself and its clients from hacking or from other electronic intrusions.

2. **Scope of Work: Description of Basic Duties** (Section II) (30 points)

Assume that the number of policy holders in 2025 will be an average of 4,000 individuals. Using this number, provide the following information in your proposal:

- a. **Duties.** What the Evaluation Committee wants to know is whether your organization has the experience to address each of the tasks listed in Section II. Describe in detail how your organization will perform each of these duties.
- b. **Required Positions.** After completing the Duties section:
 - Describe the duties that will be performed by the person who will be the Executive Director.

- Name the person who will be the Executive Director. Describe this person’s experience, qualifications, skills and knowledge to perform the duties of the Executive Director. Attach a copy of this person’s curriculum vitae.
 - Name the person who will be the Deputy Executive Director. Describe the duties to be performed by the Deputy Executive Director. Describe this person’s experience, qualifications, skills and knowledge to perform the duties of Deputy Executive Director. Attach a copy of this person’s curriculum vitae. If this position is currently unfilled, please provide a job description for this role and the anticipated hiring date.
- c. **Other Positions.** List the other positions that you believe will be needed to perform the duties under this contract and briefly describe the tasks that will be assigned to each position. For each position, indicate whether you will use current staff or will hire new staff. If hiring, when will each position be filled? For key positions that will be filled by existing staff, name the person that will fill that position and attach their curriculum vitae.
- d. If you propose to use a sub-contractor to carry out any of the duties in the Description of Duties: i) justify the use of a sub-contractor rather than staff; ii) name the organization or person you will use; iii) briefly describe that organization’s or person’s experience, and, if a person, attach their curriculum vitae.
3. **Scope of Work: Description of Important Issues** (Section II) (25 points)
- a. What the Evaluation Committee wants to know is whether your organization has the experience to address each of the tasks listed in this Section and the ability and willingness to staff up as needed to take on significant additional responsibilities. For each bullet, describe what experience your organization or staff has with these or similar issues. Describe what your organization will do to help the Board address each task.
- b. Relations with the NM Legislature and executive branch agencies. Unless you have already done so, describe here any limitations or special arrangements that will be required to carry out the tasks of informing and working with the Legislature and executive branch agencies.
4. **Cost (25 points)**
- Prepare a 2025 line item budget for this contract as follows:
- a. **Personnel:** List each staff position (including support staff), starting with the Executive Director. Show the percentage of time devoted to this project (100%=full- time). Show the annual salary or wages to be paid for each position. Multiply the salary by the percentage of time to determine annual cost for each position. Add to determine total personnel cost.
- b. **Benefits:** List each employee benefit to be provided (and indicate which staff will receive that benefit, if all staff do not receive the same benefits); after each benefit, show the cost of that benefit as a percentage of total personnel costs. Add percentages to determine the total cost of benefits as a percentage of personnel costs. Multiply by the total personnel cost amount to determine total benefits costs.
- c. **Contractors:** List each contract. Show the cost for each contractor separately, and then add to determine total contractor cost.

- d. **All other direct costs:** List each major other cost (space, travel, communications, supplies and materials, etc.); briefly explain what is included in that item, and show the cost. Add to determine total other costs.
- e. **Overhead:** Explain how overhead is calculated, and the amount requested.
- f. **Gross Receipts Tax:** Provide an estimate of Gross Receipts Tax and indicate how it was calculated.
- g. **Total:** Add all cost categories to show the total cost for the first year of the contract.
- h. **Method of payment.** Propose how you will be paid. In the past, the Pool has used the following methods:
 - 1) Per policy holder, per month;
 - 2) Same, but transition to a different amount when the number of policy-holders increases or decreases;
 - 3) Same, but moving to a flat fee when the number of policy-holders reaches a certain number;
 - 4) Flat fee payable in 12 monthly increments.

Offerors may choose any of these methods or propose something else. If proposing a per policyholder approach, assume 4,000 policyholders. (Note that the model contract (Appendix A) will be modified to conform to the payment method agreed to by the Board and the successful Offeror).

5. References (5 points)

Provide names and contact information for three organizations that your organization has recently worked with and explain the type of work performed. Please inform each of them that they may be contacted by the Procurement Manager.

6. In State or Veteran Owned (5 extra points)

In-state companies or New Mexico veteran-owned businesses who have been certified by the State Taxation and Revenue Department will receive an additional 5 points above those awarded above. Note that applicants may claim an in-state or a veterans-owned preference but not both.

C. EVALUATION PROCESS

The evaluation process will follow the steps listed below:

- All Offeror’s proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
- The Procurement Manager may contact the Offeror for clarification of the proposal as specified in the Explanation of Events, Paragraph 6.
- The Evaluation Committee may use other sources of information to perform the evaluation as specified in the General Requirements, Paragraph 4.

- Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly.
- Responsive Proposals will be reviewed by the Evaluation Committee on the factors that have been assigned a point value. The Responsible Offerors with the higher scores will be selected as Finalist Offerors based upon the proposals submitted
- The Finalist Offeror whose proposal is most advantageous to NMMIP (but not necessarily with the highest point score), taking into consideration the evaluation factors, will be recommended for contract award as specified in Explanation of Events, Paragraph 6.
- The Procurement Manager will submit a report to the Board with the Evaluation Committee’s recommendation regarding which Offeror should be chosen as Executive Director.
- The Board will select the most advantageous Offeror and authorize a member of the Board to begin negotiations.
- The contract will be awarded, as specified in Explanation of Events, Paragraph 10.

D. EVALUATION FACTOR POINTS SUMMARY

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

FACTOR	MAXIMUM POINTS AVAILABLE
MANDATORY SPECIFICATIONS	
Health Insurance Experience	Pass/fail
Assurances	Pass/fail
DESIRABLE SPECIFICATIONS	
Organization	15
Scope of Work: Basic Duties	30
Scope of Work: Important Issues	25
Cost	25
References	5
TOTAL	100
Extra points for either In-State or Veteran Owned	5

Appendix A

Exhibit A: Sample Contract

This contract is entered into by and between the New Mexico Medical Insurance Pool ("Pool") and xxx ("Contractor") and is effective as of (date).

RECITALS

WHEREAS the New Mexico Legislature created a nonprofit entity now known as the New Mexico Medical Insurance Pool; and

WHEREAS the Board of Directors of the Pool is authorized to enter into contracts as are necessary or proper to carry out the provisions and purposes of the Pool Act; and

WHEREAS the Board of Directors of the Pool has determined that the hiring of an independent contractor to perform executive director duties would be beneficial to the carrying out of Pool functions by enhancing program efficiency, performance and accountability.

NOW, THEREFORE, IT IS AGREED THAT:

1. The Contractor agrees to provide services to the Pool as its Executive Director and to provide related services as set forth in the scope of work included in Schedule A, the Request for Proposal (RFP) of (date), and Contractor's Response to that RFP dated (date) incorporated here by reference.
2. If the Board and Contractor agree that additional services shall be provided by Contractor, they shall enter into a written Amendment to this Contract that identifies the additional services to be performed as well as the amount to be paid for those services.
3. The Pool shall pay the Contractor for services provided under this contract the amounts, and by the methodology, indicated in Schedule B, attached hereto. The Contractor shall submit an invoice by the 5th day of each month for services performed and for reimbursable expenses incurred the prior month. Payment shall be processed within 10 business days of receipt of the invoice from the Contractor.
4. The Contractor affirms that it will continuously have sufficient computer systems to perform the duties required under this contract. Contractor shall be responsible for all maintenance and upgrade of any such systems. The cost of any maintenance and updates of the system shall be the sole responsibility of the Contractor.
5. The Contractor affirms that it will perform the services required under this Contract at its own place(s) of business and that it will have sufficient communication systems and backup coverage procedures such that the duties required by this Contract can be accomplished within a reasonable period of time.
6. Costs incurred by the Contractor such as phone, office rent, lodging, postage, meals and mileage shall be the responsibility of the Contractor. All expenses related to the employment of employees or independent contractors hired by Contractor shall be the responsibility of the Contractor.
7. This Contract is a one-year contract beginning (date) and ending on (date). This contract may be extended, at the discretion of the Pool, in one year increments not to exceed four total years. Any changes in the terms of this Contract, including the fee, can be renegotiated on an annual basis.

8. Either party shall have the right to terminate this Contract, without cause, upon 60 days' notice by certified mail, return receipt requested. If notice is so given, the Contract shall terminate on the expiration of the 60 business days. The parties shall not be relieved of the duty to perform their contractual obligations in good faith up to the date of termination. Contractor shall not be entitled to payments respecting any work Contractor performs or expenses Contractor incurs after the termination date.
9. The Pool has the right to terminate this Contract immediately for cause by providing written notice to Contractor. Cause includes, but is not limited to, the following:
 - a. Contractor furnishes any statement, representation, warranty, or certification in connection with this Contract which is materially false or deceptive.
 - b. Contractor fails to perform to the Pool's reasonable satisfaction any material requirement of the Contract or is in violation of any specific provision.
 - c. The Pool determines that satisfactory performance of the Contract is substantially endangered or that unsatisfactory performance or a default is reasonably foreseeable.
 - d. Contractor becomes unable to perform the services for which it contracted; or
 - e. Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime related to fiduciary duties.
10. The termination provisions in this Contract are not exclusive, and shall not serve to waive any other legal rights and remedies belonging to the Pool, including those rights and remedies that may arise from the Contractor's default under or breach of this Contract.
11. During the term of this Contract, the Pool may evaluate this Contract and Contractor's performance under this Contract at the end of the first 6 months and at least annually thereafter.
12. Any waiver, alteration or modification of any provisions of this Contract shall not be valid unless in writing and signed by the parties.
13. The parties to this Contract intend that the Contractor's relationship to the Pool is that of an independent contractor. Contractor shall be solely and entirely responsible for the acts of its agents, employees and subcontractors. Contractor shall be solely responsible for any and all taxes owed by it.
14. In the event of a claim by a third party, the Pool agrees to indemnify and hold harmless Contractor and its directors, officers, and employees against any loss and all claims, lawsuits, settlements, judgments, costs, penalties, and expenses, including reasonable attorneys' fees, resulting from or arising out of any function of Contractor under this Contract, unless it is determined that the liability was the direct consequence of dishonest or criminal conduct, willful misconduct, gross negligence, or fraud on the part of Contractor or any of its directors, officers, or employees.
15. In the event of a claim by a third party, Contractor agrees to indemnify and hold harmless the Pool, the Board, and individual Directors of the Pool Board against any loss and all claims, lawsuits, settlements, judgments, costs, penalties, and expenses, including reasonable attorneys' fees, that result from and are the direct consequence of dishonest or criminal conduct, willful misconduct, gross negligence, or fraud on the part of Contractor or any of its directors, officers, or employees.
16. Contractor shall maintain a complete file of records, documents, communications and other

materials pertaining to the delivery of services under this Contract. All files shall be the property of the Pool and shall be maintained by Contractor for a period of three years from the final payment for services under this Contract. At the end of the term of this Contract or in the event of termination for cause or otherwise, all files, including all historical files and electronic files or database held by Contractor relating to this Contract, shall be forwarded to the Pool upon request by the Board at no cost to the Pool.

17. Contractor will be required to comply with all HIPAA requirements for business associates of the Pool. Contractor and the Pool agree that this contract may be amended by the parties if such amendment is required by HIPAA regulations.
18. Any dispute between the Pool and Contractor arising out of or related to this Contract shall be settled by a single arbitrator selected by the parties. The Pool and Contractor shall share the costs of the arbitrator. The decision of the arbitrator shall be binding on both parties. Each party shall bear its own expenses and attorneys' fees in the arbitration process. The New Mexico Arbitration Act shall apply to the proceeding.
19. This Contract supersedes any previous understanding between the parties regarding the matters covered in this Contract. This Contract and any exhibits shall constitute the entire Contract between the parties for the provision of services of Contractor.
20. Contractor may not assign or delegate any of its rights or obligations under this Contract without first obtaining the written consent of the Pool. Contractor shall not employ any subcontractor to perform any tasks required to be performed by Contractor under this Contract without first obtaining the written consent of the Pool. No such subcontract shall relieve Contractor from its obligations and liabilities under this Contract, nor shall any subcontract obligate direct payment from the Pool.
21. This Contract has been executed and delivered in New Mexico and shall be construed and enforced in accordance with the laws of the State of New Mexico.
22. Any notice permitted or required by this Contract may be delivered to the party or mailed to the party as follows or to such other address as the party shall designate:

To: New Mexico Medical Insurance Pool
(**Superintendent of Insurance**), Chairman
P.O. Box 1689, 1120 Paseo de Peralta Santa Fe, NM 87504

To: (Contractor)
23. The terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term. Further, the waiver of any breach of a term hereof shall not be construed as a waiver of any subsequent breach of the same or any other term.
24. The parties shall not be liable for any failure or delay in their performance under this Contract which is due in whole or in part to any cause beyond their individual control.
25. Final payment of the amounts due under this Contract shall operate as a release of the Pool, its Board, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Contract.
26. 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 Contract.
- b. The Contractor further represents and warrants that it has complied with, and, during the term of this Contract, will continue to comply with, and that this Contract 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:
 - i. in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Pool employee while such employee was or is employed by the Pool and participating directly or indirectly in the Pool's contracting process;
 - ii. this Contract complies with Section 10-16-7(A) NMSA 1978 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 Section 10-16-7(A) NMSA 1978 and this Contract was awarded pursuant to a competitive process;
 - iii. in accordance with Section 10-16-8(A) NMSA 1978, (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 Contract 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 Pool's making this Contract;
 - iv. this Contract complies with Section 10-16-9(A) NMSA 1978 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 Section 10-16-9(A) NMSA 1978, this Contract is not a sole source or small purchase contract, and this Contract was awarded in accordance with the provisions of the Procurement Code;
 - v. in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Contract or any procurement related to this Contract; and
 - vi. in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Contract shall not contribute, anything of value to a public officer or employee of the Pool.

- c. Contractor's representations and warranties in Paragraphs a and b of this Article are material representations of fact upon which the Pool relied when this Contract was entered into by the parties. Contractor shall provide immediate written notice to the Pool if, at any time during the term of this Contract, Contractor learns that Contractor's representations and warranties in Paragraphs a and b of this Article were erroneous on the effective date of this Contract 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 were erroneous on the effective date of this Contract or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Pool and notwithstanding anything in the Contract to the contrary, the Pool may immediately terminate the Contract.
- d. All terms defined In the Governmental Conduct Act have the same meaning in this Article.

- 27. The Pool and the Contractor acknowledge that the Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
- 28. 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 Contract. If Contractor is found not to be in compliance with these requirements during the life of this Contract, Contractor agrees to take appropriate steps to correct these deficiencies.
- 29. 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 Contract may be terminated by the Pool.

30. New Mexico Employees Health Coverage.

- a. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health Insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the Pool exceed \$250,000 dollars.
- b. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the Pool.
- c. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwmxico.state.nm.us/>.

33. If Contractor is other than a natural person, the individual(s) signing this Contract 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 hereto have executed this Contract to become effective (date).

(Signatures)

Attachments:

SCHEDULE A: Scope of Work

Copy of Contractor's proposal

SCHEDULE B: Fees and method of payment