

## “SOLE SOURCE” PROCUREMENT JUSTIFICATION

Sole source purchases are goods and services available from only one vendor. There may be just one vendor because of patents or copyrights or simply because the vendor is the only one which supplies the good or service. Using Department must provide a written explanation as to why only this particular product/service is acceptable and why no other will be suitable or acceptable to meet the need. A quote must accompany this form.

Department name: Health and Human Services and Legal Departments

1. Name of product or service: Health Care Advisor for Consultation on the Memorial Medical (MMC) Lease Agreement
2. Name of product manufacturer: Newpoint Health Care Advisors
3. Name of “sole” product supplier or service provider: Newpoint Health Care Advisors
4. Describe in general terms the product/service you are requesting and the intended application.

Doña Ana County Health and Human Services (HHS) is purchasing services from Newpoint Health Care Advisors to review the lease agreement with MMC, identify lease compliance/non-compliance issues, develop fiscal and quality reporting requirements and format, and if needed renegotiating terms of lease for clarity and to update based on changes in the healthcare delivery system and financing mechanisms.

5. Describe the unique features/capabilities/characteristics that distinguish it from other products/services.

Newpoint Healthcare Advisors' chairmen was part of the original team that negotiated and wrote the lease agreements in 2004; therefore, they are uniquely familiar with the agreements, as well as with the county and city's role. In addition to the chairmen's familiarity and expertise, the firm also includes medical professionals, health care industry leaders, lawyers, and health care finance professionals. Newpoint not only contributed to the negotiation and drafting of the original lease agreements, they continue to work on similar efforts in New Mexico, so they are also familiar with state laws, regulations, and Medicaid.


6. How did you determine there was only one source for the product or service? Provide information on the research that was performed to locate suppliers for this product(s) or service(s). (Please furnish names, addresses and other documentation).

We reached out to them based on knowledge of their previous work negotiating the original lease documents. As a result of their historical and current expertise, they can begin quickly and considering the pending NM Attorney General's investigation into MMC and their compliance with state laws it is critical that this process begins quickly. It

is in the best interest of the county to continue working with a firm that is familiar with the agreements and understands the history of the City, County, and MMC relationship.

7. What product supplier or service provider has your Department used until now to satisfy similar requirements?

Similar services have not been required in the past.

 \_\_\_\_\_  
Signature of Department Head Date 8/13/24 /

(Attach Quote and Use Additional Sheets As Necessary)

\*\*This form is used by Purchasing Department to determine if a "Sole Source" procurement criterion is met.  
Completing this form does not guarantee approval of this type of procurement.

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Confidential and Proprietary Work Product  
Subject to Attorney-Client Privilege



## Proposal for Lease Compliance Review

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Doña Ana County New Mexico

August 28, 2024

Submitted by  
**NEWPOINT**  
Healthcare Advisors

Newpoint Health is pleased to respond to the Doña Ana County Request for Proposal regarding Lease Compliance Review as follows.

#### 1. REVIEW OF LEASE AGREEMENTS WITH MMC AND RELATED DOCUMENTS; IDENTIFICATION OF LEASE COMPLIANCE/NON-COMPLIANCE ISSUES

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Newpoint will conduct an independent business review<sup>1</sup> of the Lease and evaluation of Lessee's<sup>2</sup> direct obligations to the Lessor<sup>3</sup> and Lessee's obligations to the people of the community as third-party beneficiaries under the Lease and with guidance from the statute and regulations under Internal Revenue Code (IRC) 501(r).<sup>4</sup>

- Newpoint will undertake the review and evaluation in the context of the original closing on which its team advised the City and County, including the other documents available in the closing binders held by the County Attorney's office.
- Note: Several Lease provisions cited in this RFP response are from the Term Sheet prepared by counsel for Lessor. If engaged, Newpoint will seek assistance from the County Attorney's Office to determine whether similar terms appear in the final Lease

As our team advised during the original transaction, the "court of public opinion" may offer more practical leverage on the negotiations than the strict terms of the Lease, (and we successfully navigated within that "court" on many occasions to achieve our clients' objectives).

- It appears that the only remedy for non-compliance with most obligations is to declare a default. (Need guidance from County Attorney on this point.)
- Nevertheless, the specter of taking the Hospital to the court of public opinion might provide enough leverage to gain compliance.

The review will consider the Hospital's ongoing obligations under the Lease, including the following examples. Newpoint will request documentation of Hospital's compliance with such obligations. Where the obligation demanded performance in comparison to standards at the time of closing, we will request evidence of what policies were in effect at closing and currently.

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<sup>1</sup> Although two of the lead consultants on this project have law degrees, they will not practice law in the course of the assignment.

<sup>2</sup> Lessee and its affiliates will be referred to as "Hospital" and the facility as "MMC."

<sup>3</sup> "Lessor" may include the City as a possible joint owner (to be determined as part of the review). In that case, Newpoint will gain an understanding of the relative roles of the owner/Lessor in the negotiation and represent the interests of both if the County Attorney determines that they are not adverse parties.

<sup>4</sup> Though IRC 501 regs apply to not-for-profit hospitals, they provide standards used by the industry, including several of the Hospital's competitors.

- Obligation to maintain MMC as a full-service general acute care hospital, sustaining the same types and level of services as currently provided.
- Of great importance is the Hospital's commitment to "maintain its policies for indigent patients comparable to those in effect at closing."
- Commitment to sustain the UNM family practice residency program at MMC.
- Obligation to prepare and submit the Annual Review required by §4.9 of the Lease "to ensure that Lessor is appropriately informed on an ongoing basis of the parties' respective performance under the Lease and APA." Request documentation of Hospital's compliance with this obligation.
- Annual grant to and coordination with the County to seek state matching funds for indigent care.
  - Newpoint will rely on advice from the County Attorney to determine the effect of the facility's probable loss of its Sole Community Provider status with the entry of two competitors in the county. The SCP status may be relevant, especially in light of language providing that the commitment applies even if it exceeds SCP funding (which implies that SCP is still in play).
  - Matching fund programs may have expired in New Mexico. New state legislation introducing a bed tax to fund IGTs for FMAPs,<sup>5</sup> however, may still apply under this provision.
- Review compliance with community benefit standards provided by the expressed or implied terms of the lease, by industry practice, or at least by the "court of public opinion" mentioned above. The IRS and, we would argue, industry standards, designed community benefit standards to track how well hospitals meaningfully contribute to the health and well-being of their communities.
- Trend Lessee's actual payor mix during past 3 years, with a focus on the Medicaid and unreimbursed financial classes.
- Request the Hospital's Financial Assistance Policy and documentation of its practices under that FAP.
- Request documentation of Hospital's provision of medically necessary care as defined by New Mexico Medicaid, as well as documentation of

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<sup>5</sup> See §1905(b) of the Social Security Act, 42 U.S.C. §1396d(b).

actions to publicize them, similar to the requirements of IRC 501(r)(4) for nonprofit hospitals.

- Its triennial Community Health Needs Assessment (CHNA), if any (*see response to #3*).
- Other evidence of its community benefit policies and performance thereunder.
- Evidence or public complaints regarding any extraordinary collection action.
- To the extent the review and evaluation activities involve legal construction, Newpoint will rely on guidance from the County Attorney's Office.

Newpoint will advise the Lessor in its determination of the following matters, among others:

- The practical obligations of the parties from a deal perspective.
- The business aspects of any impact of other lease or closing provisions on the obligations of the parties.
- Whether the Lease has been amended or otherwise modified, either formally or by practice (again, with advice of counsel).
- In its review of the obligations expressly imposed by the Lease, Newpoint will consider what *implied* obligations the Lease may impose

## 2. REVIEW AND EVALUATION; PROCESS FOR INTERFACE WITH LESSEE

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§4.9 of the Lease provides the foundation for interface process between Lessor and Lessee:

Lessors shall have the right on an annual basis to meet with Lessee or its designated representatives to receive a report concerning and to review the fulfillment of Lessee's obligations under this Lease and the Asset Purchase Agreement, and to review and discuss the continuum of care provided by Lessee for the residents of the City and the County.

Accordingly, we will build the interface as follows:

- Identify the negotiating representative of each principal.
  - Clarify the authority of the Lessee representative(s). The recent resignation of the Lessee's CEO makes the care applied to this step even more important.
  - Clarify the extent to which we should involve Lessee's corporate owner (relevant unit of LifePoint), so that we can rely on understandings reached before the execution of a final document in order to keep the negotiations on track.
- Understand the historical relationship of all parties: has it been positive?
- Understand impact of current AG review and how to coordinate, or not, with AG's office to achieve an optimal result.
- Work with all parties to review their understanding of their obligations under the Lease, expressed and implied, item by item, to achieve a common understanding of what the Lease provides for purposes of productive negotiation.
- Once the above understanding is reached, review quantitative and qualitative information to determine compliance. Much of the document review can take place offsite, but on-site visits are needed to engender cooperation, find negotiation leverage, and streamline the entire process. For instance, we can find leverage points by probing the opposing team in person to learn what they would like to get out of this process, and why.
- Develop a positive working relationship with Lessee's leaders, to the extent possible, to help the parties get to yes.<sup>6</sup>
  - We have found that avoiding an adversarial relationship can avoid inefficiencies that interfere with a smooth negotiation.

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<sup>6</sup> cf., Fisher and Ury, *Getting to Yes*, Harvard Negotiation Project, 1981.

### 3. DEVELOP REPORTING REQUIREMENTS AND FORMAT; PROVIDE CONTEXT FOR EVALUATING QUALITY MEASURES AND HOSPITAL PERFORMANCE.

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Depending on the circumstances, Newpoint's team would recommend that the Lessee work with us at the front end to develop a joint framework for review of data proving its care for the community under the Lease.

- That joint framework would logically lead to an ongoing format for the reporting of performance against the lease terms and against a set of objective standards we would jointly develop with the Lessee.
- We would recommend using CMS quality ratings and patient satisfaction measures in developing measurement standards to be applied.
- Understanding and applying standards related to the level of uncompensated care obligations requires a nuanced approach to the varying definitions in the industry, though the language of the lease on required services may narrow that field.
- We may recommend that the Lessor and Lessee apply a balanced scorecard methodology for future reviews. Our team has assisted hospitals with the development and application of balanced scorecards not only for operating performance, but also for quality, patient satisfaction, and employee engagement.
- The Hospital may have a balanced scorecard to track its own performance on business measures it has chosen to adopt. We might be able to negotiate a similar tracking process for key points of the Lease.
- Ongoing enforcement could also take a form that hospitals regularly use after Joint Commission surveys: the Plan of Correction with specific items, findings, and goals.



#### 4. IF NEEDED, RENEGOTIATING TERMS OF LEASE FOR CLARITY AND TO UPDATE BASED ON CHANGES IN THE HEALTHCARE DELIVERY SYSTEM AND FINANCING MECHANISMS.

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This point follows logically from the others above. We understand that Lessee has stated a desire to extend the Lease (which would facilitate its own financing). That desire may offer Lessor substantial leverage to tighten up community benefit terms. Both parties are likely to share an incentive to clarify the terms in the light of almost two decades of experience.

- For matters related to community benefit, for example, we could also consider requiring the Lessee to prepare a community health needs assessment (CHNA) every three years to identify health-related issues and concerns within its service area and adopt an implementation strategy to address the needs that the CHNA identifies.
  - Not-for-profit hospitals prepare a CHNA every three years using it to comply with IRC 501(r). Most for-profits do not, but MMC is likely to have personnel who have worked in the nonprofit sector and have experience with CHNAs.
  - An effective CHNA process would gather data on demographic characteristics, health behaviors, accessibility of healthcare, health outcomes, and social determinants of health.
  - The resulting CHNA would help both the Hospital and the Lessor understand the health needs of the community and develop strategies for effective intervention to address those needs.
- This is the point at which Newpoint's work will get creative, as these reporting requirements should consider financial deliverables, quality of care, social determinants of care, service delivery, and a readiness to move to Value-Based Care and Payment, Community Benefit, investment in the community, and even the hospital's adoption of the role of a convener for community health matters not directly related to reimbursable care.
- Newpoint stays current with developments in the industry such as the paradigm shift from Fee for Service to Value-Based Payment, upper-payment limit funding, and inter-governmental transfers under state and federal Medicaid programs, and the growing influence of private equity in hospital financing.

## 5. COST PER DELIVERABLE BASED ON HOURLY RATE AND ESTIMATED HOURS, AND TRAVEL AND TAX AS APPROPRIATE.

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Joe Lupica and Alex Valdez will lead Newpoint's advisory team for the Lessor. They will also have access to colleagues in the firm with deep knowledge of multiple phases of hospital strategy, structuring, and management, as well as regulations and Joint Commission surveys. The team leaders and two of our many subject matter experts are described below:

- **Joseph R. Lupica, JD, FACHE**, our Chair and Managing Principal, is well known to the Doña Ana County Department of HHS and some current and former officials in the City of Las Cruces. Lupica led the team that negotiated the original Lease transaction regarding Memorial Medical Center on behalf of the County and City after gaining in-depth experience in the investigation and articulation of the community's needs and aspirations as well as the hospital's business requirements. His team's work led to a successful transaction with surprisingly wide community support. NACo recognized the transaction and the intensive community engagement that he implemented on the County's behalf with NACo's highest Annual Award for Healthcare. Lupica has led other successful projects in New Mexico, including the merger of St. Vincent Regional Medical Center with CHRISTUS Health, the development of the new Lincoln County Medical Center, funded by a tough but successful lease renegotiation with Presbyterian Health, and a current study on behalf of Anchorum Health Foundation to address health and social services needs in northern New Mexico.
- **J. Alex Valdez, JD, FACHE** Senior Vice President, brings his experience as a hospital leader and a former Secretary of Health for the State of New Mexico to community-focused projects, including several of those listed above. Valdez has been a regional and international healthcare leader, guiding organizations through growth, change, and affiliation for more than 30 years. Before joining NEWPOINT, Alex was a regional CEO and hospital administrator for CHRISTUS Health, working domestically and in Latin America, a position he assumed after serving as CEO of St. Vincent Regional Medical Center. Some of his finest recent work has come on the Anchorum Health Foundation study, where he worked on its repositioning as a force for transformational change as befits its recent growth into a half-billion dollar foundation, the largest in the state.
- Other colleagues available to the team include **Brett Norell, MHA, FACHE**, who served as CFO of a hospital system and CEO of a community hospital. Brett has hands-on experience managing indigent

care, balanced scorecards, and hospital financial challenges. **Charlton Wilson, MD**, recently served as the Chief Medical Officer of the largest Medicaid health plan in Arizona, where he gained experience in balanced scorecard methodology and the establishment of standards for quality. Dr. Wilson has deep professional roots in New Mexico, having begun his career as a uniformed US Public Health Service officer providing primary health care for the Mescalero Apache community.

The five topic areas we derived from the RFP provide an outline for a budget. A negotiation of this magnitude cannot succeed without in-person encounters with the opposing party and with the officials of the County and City. We will work with you to refine both the personnel and the items making up the Scope of Work. This project, however, will not follow a script. As we said in our meeting, it's a bit like building an airplane in mid-flight.

Our team and their estimated hours for each of the four topics follow. The table assumes 16 hours per site visit, plus half-time for air travel (non-air travel is charged @100%), based on travel estimates for each consultant. It also assumes the cooperation of Lessee in scheduling, as well as one meeting each for the County Commission and City Council. We believe these estimates are likely to be exceeded, but Newpoint will honor the upper limit of \$231,000 as shown below for the proposed 3-month project. Please note that in accordance with industry practice, the on-site per diem embeds each consultant's investment off-site time for research and analysis. Newpoint will also apply an upper limit of \$9,000 for reasonable expenses over the three months and will itemize them in our firm's usual format. State of New Mexico per diem policies guided our calculation of expenses for lodging and meals, supplemented by current airfare research. Those calculations are available upon request. We will rely on the County Attorney to add the necessary gross receipts tax, if applicable, to this proposal. Please note that all but one of our consultants have their offices and domicile outside the state of New Mexico.

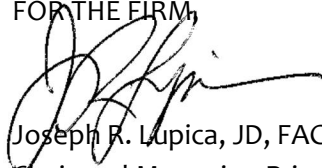
Consultant	Rate	Est site visits	Est hours	On-site days	On-site per diem	Total fees
Mr. Lupica	575	4	80	10	9,000	90,000
Secretary Valdez	550	3	60	7.5	9,000	67,500
Physician Consultant	650	1	24	3	9,500	28,500
Principal	400	2	40	5	9,000	45,000
<b>Total</b>						<b>231,000</b>

Newpoint will absorb desk time (+50%) and travel time.  
Per diem fees prorated by half-days on site.



Newpoint appreciates the confidence that our current and former clients, including our friends at Doña Ana County, have in our firm. As before, you will notice that our team members love what we do – and it shows.

Respectfully Submitted,  
FOR THE FIRM,



Joseph R. Lupica, JD, FACHE  
Chair and Managing Principal

**Thank you for your submission.**  
**The procurement will be reviewed by one of our buyers.**

In the future, any amendment to a sole source contract that adds to or changes or impacts in any way any of the terms and conditions listed below (which are set forth in statute, see Section 13-1-126.1. NMSA 1978), the sole source must be reposted for a new, additional 30 day period.

- if the parties to the proposed contract change;
- if the nature and quantity of the service, construction or item of tangible personal property being contracted for, changes; and
- if the contract amount changes.

Print

**Agency :** C0009 - DONA ANA COUNTY  
**Procurement**  
**Number :** 50-C0009-24-CP379  
**Next Step :** REVIEW  
**Uploaded Files :** Sole Source Determination: Newpoint Health\_Sole  
Source\_Request.pdf  
**Completed date :** Monday, September 9, 2024 11:51 AM  
**Completed by :** Michael Perez



## Michael Perez

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**From:** GSD.SPDInfo@state.nm.us  
**Sent:** Monday, September 9, 2024 11:52 AM  
**To:** Michael Perez  
**Subject:** State of New Mexico :: Sole Source / Emergency Submission

Greetings,

Your Sole Source/Emergency Procurement request has been SUCCESSFULLY SUBMITTED and is pending State Purchasing Division approval for posting to the GSD Website. Once approved, you will receive an email notification advising that your request has been posted. Please keep the document number referenced below in a convenient place. You will need this number to search the Sole Source/Emergency website for status updates to your request.

Document Number ID: 50-C0009-24-CP379

For Sole Sources:

In the future, any amendment to a sole source contract that adds to or changes or impacts in any way any of the terms and conditions listed below (which are set forth in statute, see Section 13-1-126.1. NMSA 1978), the sole source must be reposted for a new, additional 30 day period.

- (1) If the parties to the proposed contract change;
- (2) if the nature and quantity of the service, construction or item of tangible personal property being contracted for, changes; and
- (3) if the contract amount changes.

Please email all inquiries to:GSD.SPDInfo@state.nm.us.

Sincerely,

General Services Department

State Purchasing Division