



**STATE OF NEW MEXICO  
EMERGENCY DETERMINATION FORM**

The emergency procurement method (*NMSA 1978, Section 13-1-127*) may only be used when the service, construction or item of tangible personal property procured:

1. is needed immediately to:
  - a. control a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; or
  - b. plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event; and
2. cannot be acquired through normal procurement methods.
  - a. The agency entering into an emergency procurement should employ a competitive process to the extent practicable under circumstances.

The purchase or lease of heavy road equipment is not allowed under the emergency procurement statute.

The state purchasing agent or a central purchasing office that makes an emergency procurement shall outline its determination of the basis for the procurement and its selection of the contractor in writing and include the writing in the procurement file. (That writing can be made on this form.) Promptly thereafter:

- the state purchasing agent shall post notice of the procurement on its website; or
- the central purchasing office shall post notice of the procurement on its website, if it maintains one, and shall transmit the notice to the state purchasing agent for posting on the state purchasing agent's website.

NOTE: the state purchasing agent or a central purchasing office that makes an emergency procurement to plan or prepare for the response to a serious threat to public health, welfare, safety or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure or similar event shall account for the money spent in making the procurement and report on that accounting to the legislative finance committee and the department of finance and administration within sixty days after the end of the fiscal year in which the procurement was made.

I. Name of Agency: Regulation and Licensing Department (RLD)

Agency Chief Procurement Officer: Noah Sedillo

Telephone Number: 505-699-9054

II. Name of Contractor: Bio-Tech Medical Software dba BioTrackTHC  
(Share Supplier ID 0000113396)

Address of Contractor: 6750 N. Andrews Ave. Ste 325 Ft. Lauderdale, FL 33309

Amount of prospective contract: \$11,839.13/mo. x 12 months = \$142,069.56

Term of prospective contract: One year, November 1, 2024 – October 31, 2025

III. Thoroughly list the services (scope of work), construction or items of tangible personal property being procured:

The following scope of work details the immediate need by the Regulation and Licensing Department’s (RLD) Cannabis Control Division (CCD) as an emergency procurement providing the Procuring Agency Software as a Service for its Statewide statutorily mandated Traceability and Cannabis Tracking System. This scope of work is a new contract between the RLD and Contractor; however, this contract is similar to an extension of Contract No. 23449 that was approved in 2022, between the Contractor and the Department of Health (DOH) to ensure the continued delivery of software services required for the statutorily mandated Traceability and Cannabis Tracking System.

- Host existing Traceability and Cannabis Tracking System.
- Accommodate commercial sale and inventory management activities within the Commercial Cannabis Industry per the Cannabis Regulation Act and all adopted rules and regulations while ensuring compliance for sales to medical patients as required within the Lynn and Erin Compassionate Use Act NMSA 1978, Section 26 and all adopted rules and regulations.

IV. Provide an explanation for the justification of the procurement including a description of the emergency conditions(s) requiring use of emergency procurement and the practicable competition utilized in compliance with *NMSA 1978, Section 13-1-127*.

An emergency condition exists that threatens the health and safety of the people of New Mexico, specifically the continuity of care for medical cannabis patients who may lose access to purchasing cannabis for approved medical conditions. Pursuant to Section 26-2C-3 (b) NMSA 1978, the CRA requires the tracking of cannabis from seed to sale. Additionally, the potential loss of the required software will harm the division's ability to ensure that cannabis on the market has passed quality assurance testing. It will also prohibit the division's ability to conduct product recalls if products containing mold, microbials, contaminants, or pesticides are identified, and will hinder its ability to prevent and track the diversion of regulated cannabis products to the illicit market.

In 2021 the legislature passed the Cannabis Regulation Act (CRA), which created a framework for the regulation of recreational cannabis and established the Cannabis Control Divisions (CCD) as a new agency responsible for carrying out the CRA.

Prior to the CRA, medical cannabis was regulated pursuant to the Lynn and Erin Compassionate Use Act NMSA 1978 (LECUA), which fell under the New Mexico Department of Health (DOH)

as the agency responsible for caring out the regulations related to the licensing and enforcement of medical cannabis products.

In 2021, all responsibilities that were previously under DOH related to both recreational cannabis and medical cannabis (except for the medical patient registry system) were transferred to the RLD, this included the transfer of any service contracts that were previously entered into by DOH related to services performed to carry out the LECUA.

On December 23, 2020, the DOH entered into an agreement with the Contractor to provide monthly maintenance, support and hosting of the cannabis tracking system. On March 2, 2022, the DOH, again as the main holder of the contract with Contractor, signed a contract with Contractor to continue the monthly maintenance, support and hosting of the cannabis tracking system. The agreement signed on March 2, 2022, had a termination date of October 31, 2024. The agency reserved the right to renew the contract on an annual basis by mutual Agreement not to exceed a total of 10 years in accordance with NMSA 1978 §13-1-150. The DOH previously indicated to the CCD that they would ensure the Contract with Contractor was renewed month-to-month after the contract's October 31, 2024, termination date until such time as the RFP for the future software service was operational. The RLD relied upon the DOH's assertion that necessary software services for the RLD would continue on a month-to-month basis under the existing contract until the new contract was in place and operational. However, on October 16, 2024, the DOH informed the CCD they would not enter into a month-to-month continuation of the contract with Contractor. In light of this new development, the RLD must now proceed with this emergency procurement.

- V. Describe what measures are being taken to minimize the duration and effect of this particular emergency procurement (for example: is the emergency only in place until a competitive process can be completed, etc.).

The CCD is working with potential RFP Contractors to ensure that any transition from Contractors will occur as quickly as possible. This emergency procurement will only be in place until the RFP process is completed, a new contract has been awarded pursuant to that RFP, and delivery of services has begun under that new contract.

- VI. Describe what measures the Agency will take in the future to prevent/mitigate use of an emergency procurement under similar circumstances.

On or around August 7, 2024, the DOH and RLD published a Request-for-Proposal (RFP) for a new contract for software services. For those services that are RLD-specific, a contract will be awarded pursuant to the RFP which contract will be entered into directly between the RLD and the Contractor chosen upon the completion of the RFP process. The new contract for cannabis track-and-trace software services will not include the DOH for the portions needed to continue operations pursuant to the CRA. Therefore, future contract amendments for extensions of service related to this software will be under the control of the RLD and will not require the DOH's involvement for future amendments.

Certified by:

Date: 10/21/2024

DocuSigned by:  
Noah Sedillo  
C9A6083B703449E  
Agency Chief Procurement Officer

Agency Approval by:

Date: 10/21/2024

DocuSigned by:  
Clay Bailey  
C9A6083B703449E  
Cabinet Secretary/Governmental Entity Head or Designee



New Mexico Regulation and Licensing Department  
Cannabis Control Division  
1209 Camino Carlos Rey  
Santa Fe, NM 87507

October 17, 2024

To Whom It May Concern,

This letter confirms that BioTrack is happy to continue to be the sole provider for the State of New Mexico Regulation and Licensing Department Cannabis Control Division Seed-to-Sale system and to provide hosting, maintenance, and support services at the currently contracted rate of \$11,839.13 per month.

BioTrack will continue to honor the current contract terms for up to 12 months from November 1, 2024 – October 31, 2025, or until a new contract is executed.  
 $\$11,839.13/\text{mo.} \times 12 \text{ months} = \$142,069.56$

BioTrack looks forward to a continued partnership with RLD, and to continue to provide Seed-to-Sale functionality to ensure public health and safety. If there are any questions or more information is required, please reach out to me directly at [Jason.herman@biotrackthc.com](mailto:Jason.herman@biotrackthc.com)

Sincerely,

A handwritten signature in black ink that reads 'Jason W. Herman'.

Jason Herman  
Director  
BioTrack  
6750 N Andrews Ave  
Fort Lauderdale, FL 33309