

Implementation of Commission Mandates RFA 0705141214

Clarifications and Corrections

The Department and DASNY wish to clarify the following points discussed at the May 24 information conference:

Wickes Law – The Wickes Law does **not** apply to grant-funded contracts of the type that will be let under this RFA.

Prevailing Wages -The requirement to pay prevailing wages as prescribed by Article 8 of the New York State Labor Law **does** apply to contracts to be let under this RFA, as stated at the conference.

Repayment for Sale of Assets – At the conference, staff stated that if a facility disposes of an asset and realizes a profit, some of the funds involved, if not all, will come back to the State to defray the public investment in the implementation of the facility's Commission mandate. Repayment of funds in an appropriate amount will apply regardless of whether a "profit" of more than what was originally paid for the asset is realized. The State will share in whatever proceeds are realized, if and when assets are liquidated, in order to arrive at the net lowest public investment for the project. However, if the proceeds from the sale were already budgeted as part of the entity's financial contribution to the project, there would be no expectation that this amount would be returned to the State. Instead, the repayment would be any proceeds from the sale in excess of those expected and included in the project budget.

Questions and Answers

1. Could you provide a list of the 81 institutions eligible to respond to the RFA Number 0705141214 "Implementation of Commission Mandates"?

A list of the facilities required to comply with Commission mandates appears on this Web page. These are the facilities that received January 31, 2007 letters from the Office of Health Systems Management (OHSM) setting forth an implementation outline for achieving their individual Commission mandates. The Department notes that although the Commission's December, 2006 report mentions several other facilities, there is no mandate or other burden of compliance on these other operators. Hence, these other providers are not

included in the list of facilities that received OHSM letters and which must implement Commission mandates.

2. Will the public have access to project applications submitted as part of the RFP process for monies being allocated under the mandates of the Berger Commission? Any information you can provide is appreciated.

The public will have access to these applications after awards are made and contracts executed.

3. Related to facilities involved in creating affiliations (not full mergers), are they potentially eligible for funding in all categories of expense listed on pages 5-6 of the RFA?

Yes, provided that, as with all activities proposed for funding under this RFA, the expenditures would relate directly to the implementation of the Commission's mandate for the applicant facility.

4. Related to facilities involved in creating affiliations (not full mergers), should the explanation of items in Section B "Impact on the Institution" discuss the impact on all institutions involved in the affiliation_or just the applicant organization?

Section B should describe the impact on both organizations. However, if the Commission's mandate requires other changes and applies principally to only one of the two facilities, Section B should describe the impact on that hospital or nursing home in more detail.

5. Should institutions involved in creating affiliations be filing a joint application?

If both institutions are subject to a Commission mandate, each must be an applicant, and the two facilities, instead of filing separate applications, may file a joint application. In these instances, one entity must be designated as the lead applicant that will enter into a contract with New York State and be financially responsible for any funds awarded, including the provision of any audits or repayments. The affiliating facility would have to sign a Multiple Provider/Participant Consent Form, to be submitted with the application (the form was not included in the RFA but is available on this Web page). For the affiliating entity, as well as the lead applicant, the submission of the application would constitute submission of the required compliance plan. Activities described under Sections A through F of the application, as well as any funding requested in sections G through N, would have to reflect compliance activities for each facility.

If the affiliating institution is not subject to a Commission mandate, no application is necessary. However, any such facility would have to sign a

Multiple Provider/Participant Consent Form, which the lead applicant (the facility subject to a mandate) would have to include with its application.

6. On page 4 of the RFA it indicates that "For applications seeking State funds for the support of mergers and affiliations, DOH and DASNY will give more favorable consideration to proposals for full asset merger or affiliation under an active parent, as compared to requests for support of affiliation under a passive parent or some lesser affiliation." Could you give a more precise definition of "Active parent" and what they would do compared to a "passive parent"?

An active parent is an entity that has received establishment approval from the Public Health Council to participate in the governance and operation of an Article 28 facility as set forth in 10 NYCRR section 600.9. An active parent is listed as an operator or co-operator on the facility's operating certificate. A "passive parent" refers to an arrangement whereby an outside entity may appoint the board of a not-for-profit organization and participate in matters not related to the governance or operation of the facility; for example, strategic planning. The outside entity in this instance is not the facility's established Article 28 operator and would not be eligible to submit an application for funding under this RFA.

7. In section 1.3 of the RFA, it states that "The technical components (Sections A through F) of the Application for Financial Assistance...will be deemed and reviewed as a plan of compliance with the applicant facility's Commission mandate." In the application itself, it is stated again that sections A through F will be reviewed as a Compliance Plan and that facilities seeking financial assistance must also submit sections G through N. Are all Commission mandated facilities required to submit an application regardless of whether they are requesting funding?

No. Facilities not seeking financial assistance under this RFA do not have to submit an application. However, they still must comply with the implementation outline set forth in the January 31 letter from OHSM, and with any associated tasks and deliverables specified in discussions and correspondence with DOH staff pursuant to that letter.

8. Could IT infrastructure and enterprise connectivity improvements tied to a consolidation effort recommended by the Berger Report be funded under this RFA?

IT costs to facilitate the connectivity of existing systems between two or more consolidating facilities would be eligible, when such costs are incidental to the larger costs of consolidation and are necessary to ensure the smooth transfer of patient information in the consolidated system. However, the replacement and upgrading of IT systems would not be eligible.

9. We are unique in that we operate both a hospital and a LTC facility that were affected by the Berger Commission. Do we need to submit two separate applications or can we submit a combined application?

If the same legal entity operates both the LTC facility and the hospital (i. e., the same operator name appears on the operating certificate of each), a combined application may be submitted.

10. We have three recommendations we are working with, two of which will have construction elements. Are we allowed to use the Schedule 2 form as an aggregate form for all construction projects (filling out a 2A and 2B for each subproject), or do we need to fill out a separate schedule two for each recommendation?

Applicants may use Schedule 2 as an aggregate form for all construction projects but must fill out a separate Schedule 2A and 2B for each subproject.

11. A conversion of m/s beds to another function was specified by the Commission. A component of this project relates to computer equipment and software. Will HEAL NY round 4 funds be available for IT as a component of implementing a Commission-specified project?

Funds will be available for IT only if 1) the expenditures in question would relate fully and directly to the implementation of the Commission's mandate for the facility and 2) would be incidental to the scope and overall cost of the proposed project. As stated in the response to question 8, the replacement or major upgrading of an existing IT system would not be eligible for funding under this RFA.

12. In the RFA on page 13, item K, "entities whose financial statements have not been subjected to an audit" must provide additional information. As I understand this guidance, if we provide the prior two audited financial statements (a year-to-date financial statement), we do not have to provide the additional information. Is my understanding correct?

No. All facilities must submit the additional narrative description referred to in item K.

13. Are facilities with lawsuits challenging Commission mandates eligible to apply for funds under this RFA?

Yes. A legal challenge to Commission mandates does not preclude a facility from applying for funds. However, any funds awarded would have to be used for the implementation of the Commission mandate applicable to the facility in question.