

Request for Proposal for a Business Consultant for the Procurement of the Fiscal Agent
of the Electronic Medicaid System (eMedNY)

FAU #0508291230

Questions and Answers

Q1. Reference: Sections 2.1.6, 2.3.5, 2.4.6, and 4.4.2

Please clarify the differences in the monthly performance report as required by this cite and the biweekly status reports required of 2.1.6, 2.3.5, and 2.4.6.

A1. Biweekly status reports are required as set forth in the RFP. The monthly reports cited in Section 4.4.2 can be a summary of the biweekly reports for that period.

Q2. Reference: Sections 2.1.1, 2.3.1 and 2.4.1

Please clarify what is required within 30 days of contract approval/phase start – a quality assurance work plan or documented quality assurance procedures.

A2. A quality assurance plan is required within 30 business days of contract approval/phase start.

Q3. Reference: Section 2.2.5

Will the business consultant be responsible for the verification of existing system requirements; development of new system requirements for new business model(s) and processes that may be proposed by the DOH and other State agencies; and ongoing update of system requirements throughout the life of the contract?

A3. The business consultant will be responsible for all requirements of Section 2.2 which includes the requirements mentioned in the above question.

Q4. Reference: Section 2.1

Does the State have existing objective criteria for reviewing the performance of the current fiscal agent? Are performance reporting requirements incorporated into the current fiscal agent contract?

A4. Service Level Agreements provide the criteria for reviewing the performance of the current fiscal agent. Performance reporting requirements are reflected in the eMedNY RFP which is available on the DOH website.

Q5. Reference: Section 2.2

Phase II does not appear to have tasks related to status meetings and status reporting. Are there any status meeting and reporting requirements/deliverables for Phase II?

A5. Section 2.2.5 includes tasks related to status meetings and status reporting.

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Questions and Answers (continued)

Q6. Reference:

Will the contractor have responsibility for reviewing the work product/deliverables of others besides the fiscal agent? One example might be deliverables or work provided by DOH. If so, what activities and/or deliverables from other parties will be reviewed by the QA, if any?

A6. The contractor will be responsible for reviewing work of both the fiscal agent and the Department.

Q7. Reference:

On page 11 (2.2.4) you indicate that as part of RFP preparation that the system requirements will need to be developed. Do you believe that this effort will require the QA vendor to completely re-define the requirements or is information about requirements already available and the QA vendor will only have to update existing information?

A7. The Department anticipates that there will be a combination of requirements that will stay the same, requirements that will have to be developed for the first time, requirements that will have to be completely re-defined and requirements that will have to be updated from existing information.

Q8. Reference Sections 2.1.6.1 and 2.1.6.2, page 10

The narrative in this and other sections of Phase I suggest that the QA activities are applied to an implementation process that the Fiscal Agent is undertaking. Other narrative suggests that the Fiscal Agent is in the operations phase of their work, with any implementation activities having been completed. For example, "Project status" referred to in 2.1.6.1.1 suggests implementation activities while "Operational issues" referred to in 2.1.6.2.1 suggests ongoing operations. Our assumption is that the QA activities in Phase I apply primarily to performance monitoring of the Fiscal Agent that is in an operations mode rather than an implementation mode. Is this assumption correct?

A8. Yes, this assumption is correct.

Q9. Reference Sections 2.3.1.1.7.2.1, pages 18-19

In this section, the deliverable is identified as the "Deliverables Requirements Document." Typically the MMIS contractor is required to produce this document with input for Department staff. The role of the Business Consultant is to determine if the document is complete and of high quality. Is this the role that the Department contemplates the Business Consultant playing vis-à-vis this Document?

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A9. Yes, this is the role the Department contemplates the business consultant playing.

Q10. Reference: Section 2.1, page 7, Quality Assurance Phase (Phase I) states the following:

- Consultation and Project Management
- The contractor must maintain a full time, on-site presence in the Albany area in continuation of support for the Department through the term of the new fiscal agent contract. The contractor shall provide on-going technical advice, assistance in resolving operational issues, assistance in establishing procedures for monitoring fiscal agent deliverables, assistance in reviewing fiscal agent operational deliverables, and continue to provide support in project management decision making and planning efforts.
- Deliverable: Technical and Management Assistance during Operations.

Section 2.1.4, page 9, Ongoing Consultation and Project Management states:

- The contractor must maintain a full time, on-site presence in the Albany area in the role of on-going assistance and support to the Department. The contractor shall be an integral, daily and vital member of the total project and is expected to provide ongoing technical advice and to assist in project management decision making and planning efforts.
- Deliverable: Technical and management assistance during the term of the current fiscal agent contract.

Since these are both included in Phase I of the RFP, how are they different or are they the same activity and deliverable?

A10. The combination of the above two sections can be considered the same contractor responsibility and deliverable. The second bullet of the first reference should read, "...through the term of the **current** fiscal agent contract."

Q11. Reference: Page 22, Section 2.4 Operations and Transition Quality Assurance Phase (Phase IV) states the following:

- Consultation and Project Management
- The contractor must maintain a full time, on-site presence in the Albany area in continuation of support for the Department through the term of the new fiscal agent contract. The contractor shall provide on-going technical advice, assistance in resolving operational issues, assistance in establishing procedures for monitoring fiscal agent deliverables, assistance in reviewing fiscal agent operational deliverables, and continue to provide support in project management decision making and planning efforts.
- Deliverable: Technical and Management Assistance during Operations.

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Section 2.4.4, page 24 Ongoing Implementation Phase Consultation and Project Management states:

- The contractor must maintain a full time, on-site presence in the Albany area in the role of on-going assistance and support to the Department. The contractor shall be an integral, daily and vital member of the total project and is expected to provide ongoing technical advice and to assist in project management decision making and planning efforts.
- Deliverable: Technical and management assistance during the first six months of operations.

Since these are both included in Phase IV of the RFP, how are they different or are they the same activity and deliverable?

A11. The combination of the above two sections can be considered the same contractor responsibility and deliverable. The second bullet of the second reference should read, "...during the five years of operations."

Q12. Reference: Section 4.1.5.3, page 39

We take exception to the withholding rights as specified in the RFP and request that they be clarified that the withholding rights apply if the delay is solely the fault of the contractor.

A12. The contractor shall fully and properly perform the tasks required by this agreement. The Department will pay the contractor the amounts proposed for such full and proper performance. In the event the contractor fails, in the reasonable judgment of the Department, to properly achieve or finish all milestones and deliverables required, the Department may withhold any or all parts of the contractor billings until such time as all milestones and deliverables are determined by the Department to have been properly achieved or furnished. Should the Department determine that the contractor failed to properly achieve or finish all of the required milestones and deliverables solely due to the actions or omissions of the Department, the contractor will be entitled to receive payment, as determined by the Department, on a prorated basis for the deliverables completed and/or milestones achieved. The Department will endeavor to notify and advise the contractor of any deficiencies in the deliverables submitted or milestones achieved by the contractor in a timely manner.

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Questions and Answers (continued)

Q13. Reference:

On pages 38, the RFP seems to describe that payment for Phases I, II, III, and IV will be based on deliverables. Page 39 seems to describe that payment will be equal monthly payments for each phase. Please clarify the billing and payment structure for this engagement and how it relates to Form E.

A13. For Phases I, III and IV, the contractor will be paid, as set forth in Section 4.1.5.3 (p. 38), the fixed amount as presented in the contractor's proposal in equal monthly payments for each phase. In the event the contractor fails, in the reasonable judgment of the Department, to properly achieve or finish all milestones and deliverables required, the Department may withhold any or all parts of the contractor billings until such time as all milestones and deliverables are determined by the Department to have been properly achieved or furnished.

Payments for Phase II will be made as deliverables are submitted and approved by the Department according to the chart on page 38 of the RFP.

Completion of Form E must be consistent with the requirements of Section 4.1.5.3.

Q14. Reference: In Section 4.1.5.3, the instructions say all invoices must submitted in accordance with the included table. However, the table references only Section 2.2 (Phase II), rather than all four phases, and the percentages for payment add up to 85%, rather than 100%.

With respect to Payment Terms, would the Department provide clarification on how should the proposers present pricing for each of the deliverables in Phase II, and how should invoices be presented? In Section 3.3 the proposer is instructed to provide pricing for each deliverable in each of the four phases.

A14. As set forth in Section 4.1.5.3 (p. 38), "Payment for Phase II will be made as deliverables are submitted and approved by the Department according to the chart below." The percentages included in the chart add up to 100%.

Pricing should be completed on Form E and invoices should be presented according to Section 4.1.5.3. Offerors are required to provide total pricing for Phases I, III and IV and to enter this pricing on Form E.

Q15. Reference: Sections 3.3.1 and 4.1.5.3, pages 31 and 38

On Page 31 & 32 the RFP states that: "This information should specify a price for each deliverable, the timeframe for providing each deliverable and the chronological order of deliverables. The plan with the deliverables and pricing will be used as the basis for the payment schedule." On Page 38 the RFP

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states: "Payment for Phases I, III and IV (QA, Takeover QA, and Operation and Transition QA) will be based upon the deliverables stated by this RFP in Sections 2.1, 2.3 and 2.4..." Is the offeror to provide the Cost Proposal supplemental information to that contained on Form E that shows each deliverable and the amount associated with producing each deliverable? Or will this level of detail be provided after contract award?

A15. Pricing for Phase I, III and IV is not made on an individual deliverable basis. Payment is correctly described in Section 4.1.5.3.

Q16. Reference Section 4.1.5.3, page 38

Payment for Phase II deliverables – This document shows that, as one of several examples, that 5% of the Phase price will be paid for "Providing any needed procurement assistance to the Department." Please explain how this fee is to be charged and paid since there is no deliverable associated with this scope of work. This question applies to several other line items in this list.

A16. Phase II tasks for Sections 2.2.8, 2.2.9 and 2.2.10 are ongoing and will be paid upon completion of the Phase.

Q17. Reference Section 4.1.5.3, page 38

This Section states that "Payment for Phases I, III and IV (QA, Takeover QA, and Operation and Transition QA) will be based upon the deliverables stated by this RFP in Sections 2.1, 2.3 and 2.4..." In Sections 2.1, 2.3, and 2.4 a portion of the scope of work is consultative in nature and may not result in the creation of a deliverable – like providing "technical and management assistance during the term of the current fiscal agent contract". Since there is no physical deliverable, how will the offeror be paid for these services? Will the offeror be paid for these types of services when the Phase is completed, which, in the case of Phase IV could be well after the service has been provided?

A17. Payments for Phases I, III and IV will be paid in a fixed amount as presented in the contractor's proposal in equal monthly payments for each phase.

Q18. Reference: Form E, page 58

Is the Phase I Total in column 3 the sum of the first three lines under Phase I column 2?

A18. The Phase I total will be the sum of lines 1, 2, 3 and 5. Line 5 is the total of line 4 multiplied by 6.

Q19. Reference: Sections 2.3 and 2.4

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Will the Department consider a change of scope if the procurement strategy ultimately results in two separate contractors delivering the services of the next fiscal agent?

A19. If, in the future, it is determined that two contractors will deliver fiscal agent functions, a change in scope would be considered by the Department.

Q20. Reference: Section 2.4

Will the Department consider a change of scope should the procurement strategy result in a takeover and replace versus a takeover and enhance?

A20. As indicated in Section 2.2.4, the RFP requires the business contractor to prepare an RFP to select a fiscal agent who would be responsible for the implementation of a new system or the takeover of the existing eMedNY, with the potential transition to a new system (e.g., enhancements, commercial off-the-shelf software, etc.). With this in mind, offerors should propose a procurement strategy that would result in a takeover and replacement approach. Offerors should provide a fully loaded rate (including all personnel, overhead, indirect, travel, profit, equipment usage, and other miscellaneous costs) for all titles included in Section 3.2.4.4 that are needed for this approach by contract year. This should be submitted as an attachment to Form E. If a procurement strategy different from this is decided, a change in scope would be considered by the Department.

Q21. Reference: Section 1.1 and 1.1.2.1, page 1

In the second paragraph under Section 1.1 the narrative indicates that the Department has allotted one year for the new fiscal agent to take over eMedNY and the DSS. In Section 1.1.2.1 the narrative indicates that the consultant is to make recommendations “whether the Department should adopt a replacement or redesign strategy...” How does the Department see the implementation timeline being impacted if the decision is to replace the current system?

A21. The Department anticipates that Phase III will be a takeover of the current fiscal agent operation. Phase IV will be comprised of two functions. The first would be the QA monitoring of the operation of the system taken over and the QA of the phase-in of a new system. This is anticipated to be a two year period. The second would be the QA monitoring of the operation of the new system for the remainder of the new fiscal agent contract. This is anticipated to be a three year period.

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Q22. Reference: Section 1.1, page 1

Is it possible that the Department could award the operation of eMedNY to one vendor and the operation of the DSS to another vendor? If this is a possibility would there be one RFP where vendors could bid some or all of the parts, or would there be two RFPs?

A22. The Department anticipates at this time that there will be one contractor. If in the future this is revised, a change in scope would be considered by the Department.

Q23. Reference: Section 2.1.3

Please describe the nature of the anticipated fiscal agent deliverables. Are they routine operations deliverables such as reports, on-going modifications and enhancements, or other? Are there any large initiatives requiring system enhancement anticipated under the current fiscal agent contract?

A23. For Phase I, the deliverables of the current fiscal agent include operations deliverables such as reports, on-going modifications and enhancements as set forth in the current fiscal agent contract. Large initiatives at this time include the Preferred Drug Program (PDP) and the National Provider Identification (NPI).

Q24. Reference:

On page 16 there is information regarding activity with the fiscal agent. Can you please explain further the scope of the fiscal agent's work? Please also explain the deliverables for which the fiscal agent will be responsible. Note that the RFP requests that the contractor "review in detail all deliverables from the fiscal agent."

A24. The scope of the fiscal agent's work will be defined as part of Phase II of this project as will the deliverables for which the fiscal agent will be responsible. The general scope of the current fiscal agent is reflected in the eMedNY RFP which is available on the DOH website. However, eMedNY is a complex system that has undergone several modifications since its inception which are not reflected in the RFP, including additional functions of a web-enabled front-end for eMedNY (thin client) and a voice activated drug prior approval function (DIRAD).

Q25. Reference:

Can DOH describe, at a high level, the scope of the eMedNY system, including business requirements and current systems that are the subject of this project?

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A25. The general scope of the eMedNY system, including business requirements and current systems, is reflected in the eMedNY RFP which is available on the DOH website. However, eMedNY is a complex system that has undergone several modifications since its inception which are not reflected in the RFP, including additional functions of a web-enabled front-end for eMedNY (thin client) and a voice activated drug prior approval function (DIRAD).

Q26. Reference: Section 2.1.2.2, page 8 Develop Review and Evaluation Criteria for Fiscal Agent Deliverables

Will the Department provide the list of deliverables, and their frequency, that you anticipate the fiscal agent will produce?

A26. The scope of the eMedNY system, including business requirements and current systems, is reflected in the eMedNY RFP which is available on the DOH website.

Q27. Reference: Sections 2.1 and 2.4

What is the anticipated level of effort, number of FTEs, anticipated for a “full time, on site presence”? Is the State seeking a contractor to provide all staff needed to QA an operational fiscal agent contract, a supplement to existing State staff, or a “consultant”?

A27. The Department is looking to the offerors to propose appropriate staffing levels. The contractor will be responsible to provide all staff needed to QA an operational fiscal agent contract.

Q28. Reference: Section 3.2.2, page 27 Organizational Summary. We had several questions regarding the staffing requirements. They are:

1. What is the intent of the Department in asking that ten candidates, plus the Project Leader and Alternate Project Leader be proposed?
2. Is there a requirement for a minimum of 12 staff and management resources?
3. Is there a minimum number of months any one of the 12 is required or expected to work on the project?
4. Are there any specific positions to be filled by the 10 additional staff to be proposed?

A28. 1. The intent of the Department is to allow offerors to demonstrate their corporate depth by submitting ten candidates plus the Project Leader and Alternate Project Leader.

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2. There is no minimum requirement. Offerors are expected to propose the appropriate number of staff.
3. There is no minimum number of months any one of the 12 is required or expected to work on the project. The offeror is required to propose the appropriate staff loading.
4. The offeror is required to propose the appropriate organization and specific positions.

Q29. Reference: Sections 2.3 and 2.4

Will the business consultant be reimbursed for travel and expenses incurred for conducting eMedNY business consultant activities with potential out of state contractors?

A29. The contractor is responsible for all costs, including travel and expenses, in its performance of the contract.

Q30. Reference: Section 2.3

While this Phase is labeled Takeover QA, Sections 2.2.1 and 2.2.4 indicate there the new fiscal agent procurement may result in replacement of the system, redesign of the system, takeover and transition to a new system. The scope and timeframe involved with each of these alternative approaches is different. How should bidders approach their proposal for the scope, schedule, and costing of Phase III - - just address as a 12-month takeover approach? If this Phase is other than QA of a 12-month takeover, will the State allow for negotiation of scope, cost, and/or staffing to meet the needs of the actual approach?

A30. Phase III represents the 12 month takeover approach and offerors should submit proposals accordingly.

Q31. Reference: Section 2.4

The Phase description indicates on-going technical advice; yet the deliverable of 2.4.4 Technical and Management Assistance is for the first six months of operations. Is on-going technical assistance required for five years or six months?

A31. The on-going technical assistance is required for five years.

Q32. Reference: Section 2.4.3

During the five years of operations, our expectation is there is potential for many modifications and enhancements to occur. To ask you to describe the nature of

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the enhancements/modifications anticipated to occur would be foolish. The State is asking for a firm fixed price on this task which seems impossible to scope without pure speculation. Would the State consider adding a time and materials component for pricing this Phase to allow for supplemental staff when needed to complete fiscal agent deliverable reviews?

A32. The Department's expectation is that this will be a fixed price contract. If, in the future, there is a substantial deviation in the RFP requirements, a change in scope will be considered by the Department.

Q33. Reference: Section 2.1, page 7

We assume that the scope of work in Phase I encompass monitoring the performance of the current Fiscal Agent's routine operations through July 1, 2009 and that any performance monitoring of the current Fiscal Agent relative to their participation in the takeover process (July 9, 2008 through July 1, 2009) is to be included and priced in the scope of work in Phase III. Is this assumption correct?

A33. Yes, this assumption is correct.

Q34. Reference: Sections 2.4 and 2.4.4, page 22

In this Section the RFP indicates that the contractor "must maintain a full time, on-site presence in the Albany area..." From the schedule on page 6 this commitment includes the time period from July 2, 2009 through June 30, 2014. We understand that this level of assistance may be appropriate for several months after takeover, it is likely that the need for this level of assistance will diminish thereafter. From a pricing perspective, providing this level of assistance may inflate the price of a proposal well beyond what is necessary to assure high quality performance by the Fiscal Agent. Is the Department willing to consider a diminishing level of assistance over time and, if so, what assumptions should an offeror make in staffing and pricing this Phase?

A34. Yes, the Department is willing to consider a diminishing level of assistance over time; however, the contractor is still responsible for appropriate staffing levels to fulfill its contractual obligations. Pricing for the five years of Phase IV is to be included on Form E.

Q35. Reference: general

Will the State be providing state office space and parking for all consultant staff during the contract? Will the State be providing normal office equipment, office supplies, network and Internet access, printer access, and copiers?

A35. The State will provide office space and normal office equipment including supplies, network and Internet access, printer access and copiers. Any fees for parking would be borne by the contractor.

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Q36. Reference: Section 2.1, page 7 states that “the contractor must maintain a full time, on site presence in the Albany area...”

Will the Department please clarify, in terms of workspace and office equipment, what the Department will provide and what the contractor is expected to provide.

A36. The State will provide office space and normal office equipment including supplies, network and Internet access, printer access and copiers. Any fees for parking would be borne by the contractor.

Q37. Reference:

It has been our experience that the QA vendor does not participate in project management activities. On pages 15-26 of the RFP we noted several tasks that appear to be project management in nature (e.g., setting up project management system), but appear to be assigned to the QA vendor as part of this project? Can you clarify that the scope as indicated on these pages is indeed the responsibility of the QA vendor?

A37. The scope as indicated on pages 15-26 is the responsibility of the QA contractor.

Q38. Reference:

On page 15 please clarify what is meant by the QA vendor having to “...set up and administer project management system...”

A38. The contractor will be required to utilize Microsoft Project as its automated project management system and the contractor will be required to maintain and report the status of the project using this system.

Q39. Reference:

Please clarify the role and activities DOH will assume in the execution of the project. Please explain if DOH intends to set up a project management office (PMO) and if so how many DOH professionals will be assigned to the project.

A39. The role of the Department will be that of management and oversight. At this time, the Department does not utilize a project management office for this project.

Q40. Reference:

Please explain to whom the QA vendor will be reporting to as part of this project.

A40. The QA vendor will be reporting to the Department’s project director.

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Q41. Reference: In the RFP requirement 2.3.1.1.2 on page 15 you state that "The contractor shall set up and manage the automated project management system..."

By "automated project management system" are you requesting that a software tool be installed and used for the duration of the project? If so does NY have standards or requirements that govern which tools must be used?

A41. The contractor will be required to utilize Microsoft Project as its automated project management system and the contractor will be required to maintain and report the status of the project using this system.

Q42. Reference:

Has the Department received assistance in the preparation of the business consultant RFP from any vendor? If so, is that vendor eligible for proposing as the business consultant?

A42. Yes, the Department has received assistance in the preparation of the business consultant RFP from a vendor. No, that vendor is not eligible for proposing as the business consultant.

Q43. Reference:

Please describe the reason that DOH has decided to rebid the fiscal agent and QA for eMedNY. Also, please describe any areas of improvement relative to QA that DOH would seek if it engaged a new QA vendor.

A43. Both the fiscal agent and QA contracts will be ending. The requirements of the business consultant are set forth in the RFP.

Q44. Reference: Section 2, page 6

If the scope of work is adjusted or expanded, does the Department have a mechanism for modifying or increasing the price of the contract to accommodate those changes?

A44. The Department and the contractor will enter into good faith negotiations that should result in an adjustment of the contract that would then be reviewed by the New York State Attorney General and the New York State Office of the State Comptroller.

Q45. Reference: Section 2.2.6, page 13 Preparing the APD and up to five APD-Us.

Typically APD-Us are required when additional funding and/or time is required. However, the scope of the work for APD-Us vary greatly from state to state or by

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federal CMS region. Will the Department provide some insight into the frequency and scope of the APD-Us submitted with respect to the current contract.

A45. In the current fiscal agent contract there have been two APDs and two APDUs. A third APDU is being developed. The scope of the APDUs has been broad and has included all changes to the eMedNY and JAD/QA contracts and State resources.

Q46. Reference: Section 2.2.4, page 11

CMS has adopted the MITA approach to the design and operation of MMIS going forward. While pursuing MITA in the design of the new eMedNY is not mentioned in the RFP, we assume that the design process should incorporate assuring compatibility with MITA standards as a component. Is this assumption correct?

A46. MITA standards should be incorporated to the degree that the Centers for Medicare and Medicaid Services (CMS) requires.

Q47. Reference Section 2.2.6, page 13

As part of the APD and APD Update process, does the Department want the contractor to provide any assistance with getting the APD or RFP approved by CMS?

A47. The business consultant would be expected to provide assistance with any questions that CMS may have regarding the APDs or APDUs.

Q48. Reference: Section 2.3.3, page 20

Typically the Business Consultant plays a significant role in coordinating the certification of the new system by CMS. Is this assistance contemplated in the "Ongoing Takeover Phase Consultation and Project Management" task? If so, at what level of effort?

A48. If certification is required, the Department anticipates that the business consultant would assist in the following tasks:

- Conduct an analysis of an appropriate certification effective date
- Prepare a Certification Strategic Plan
- Prepare the certification request to CMS, including the required affirmations
- Organize the materials to be sent to CMS in support of the certification request
- Review and approve the fiscal agent Certification Work Plan
- Monitor fiscal agent and State progress against the Certification Work Plan

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- Review documentation in support of each certification requirement (folder), identify deficiencies, and recommend changes, updates, or acceptance, as appropriate. Re-review contents as appropriate
- Review folder contents with designated State staff that will be responsible for reviewing and presenting this material to the Federal MMIS certification team
- Track each certification requirement (folder) through acceptance of contents
- Work with State staff to prepare certification visit presentations
- Conduct walkthroughs of, and critique, presentations
- Assist State staff in understanding and defending folder contents
- Support information requests directed to State staff during the certification visit
- Assist with development of a Corrective Action Plan
- Track progress against the Corrective Action Plan
- Review fiscal agent responses to conditional items
- Assist with resolution of any findings
- Assist in preparation of a response to CMS findings

Q49. Reference: Please provide us the following details:

- List of Items, Schedule of Requirements, Scope of Work, Terms of Reference, Bill of Materials required.
- Soft Copy of the Tender Document through email.
- Names of countries that will be eligible to participate in this tender.
- Information about the Tendering Procedure and Guidelines
- Estimated Budget for this Purchase
- Any Extension of Bidding Deadline?
- Any Addendum or Pre Bid meeting minutes?

A49. The list of items, schedule of requirements, scope of work, terms of reference, bill of materials required are contained in this RFP.

The RFP is available on the Department website.

This procurement is an open competition.

The information about the tendering procedure and guidelines is contained in the RFP.

The estimated budget for this purchase is for the offeror to propose.

There is no extension of the offeror response deadline at this time.

These questions and answers are the addendum.

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Q50. Reference: Section 4.6.2

We take exception to the "Order of Precedence" defined in the RFP and request that the winning proposal be in front of the RFP in the order.

A50. The original RFP language meets the Department's requirements.

Q51. Reference: Section 4.7, paragraph 3

We take exception to the clause regarding "Pending Dispute" that states contractor must perform as contracted during the dispute resolution – this may not be feasible given the nature of the dispute.

A51. The original RFP language meets the Department's requirements.

Q52. Reference: Section 4.7, paragraph 4

We take an exception to limiting litigation to NYS Courts and request the right to appeal to a Federal court (if necessary).

A52. The New York State Court of Claims Act requires that actions against the state on a contract be brought in the Court of Claims in accordance with the provisions of the Act. Appeals are addressed and governed by section 24 of the Act.

Q53. Reference: Section 4.8

We take exception to the indemnification clauses in the RFP and request that indemnification be limited to intellectual property issues and personal injury/tangible property damage caused solely by contractor negligence.

A53. The original RFP language meets the Department's requirements.

Q54. Reference: Section 4.8

We propose revising section Section 4.8 as follows:

- A. In the first, unnumbered paragraph: (i) delete the words "injured by" in the third line and insert "for death, bodily injury or damage to tangible property resulting from"; (ii) delete the period after "subcontractors" in the fourth line and insert "in the performance of this Agreement."
- B. In Section 4.8.1, after the word "supplies" in line four, insert "to contractor";
- C. In Section 4.8.2, delete the first sentence.

A54. The original RFP language meets the Department's requirements.

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Questions and Answers (continued)

Q55. Reference: Section 4.12

We take exception to the lack of a "cure right" and propose that the Department allow contractor a 30 day "cure" period of issues that might result in termination of the contract.

A55. Section 4.12.2 should be read in conjunction with Appendix D, Section T on page 89 of this RFP. Sections 4.12.2 and Appendix D, Section T of this RFP meet the Department's requirements concerning contract termination.

Q56. Reference:

On page 12 (2.2.4.4.3) you indicated that as part of the development of the RFP that the QA vendor would need to submit draft terms and conditions to be included in the fiscal agent RFP. Does the State have terms and conditions already resident that will require the QA vendor to review and update or will the QA vendor need to create a new set of terms and conditions?

A56. The Department anticipates that there will be a combination of terms and conditions that will stay the same, terms and conditions that will have to be developed for the first time, terms and conditions that will have to be completely re-defined and terms and conditions that will have to be updated from existing information. The current terms and conditions are reflected in the eMedNY RFP which is available on the DOH website. The Department anticipates that the QA vendor will propose terms and conditions to be included in the fiscal agent RFP.

Q57. Reference: Section 4.12.2

Section 4.12.2 would permit the DOH to terminate the contract for cause on 10 days' notice without giving the contractor an opportunity to cure. We propose adding a new sentence at the end of the section that says:

"However, prior to providing a notice of termination of this agreement for cause, and terminating the agreement, the DOH shall first identify in writing the reasons why it intends to terminate the contract for cause and give the Contractor thirty (30) days to cure such perceived deficiencies in its performance."

A57. Section 4.12.2 should be read in conjunction with Appendix D, Section T on page 89 of this RFP. Sections 4.12.2 and Appendix D, Section T of this RFP meet the Department's requirements concerning contract termination.

Q58. Reference:

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Section III.C of this Agreement includes the same termination provision that is contained in Section 4.12.2, discussed above. We propose adding the following language:

"However, prior to providing a notice of termination of this agreement for cause, and terminating the agreement, the DOH shall first identify in writing the reasons why it intends to terminate the contract for cause and give the Contractor thirty (30) days to cure such perceived deficiencies in its performance."

A58. The original RFP language meets the Department's requirements.

Q59. Reference: Appendix D

Section T.2 is another provision dealing with termination for default that does not provide an opportunity to cure. We propose adding the same language discussed above:

"However, prior to providing a notice of termination of this agreement for cause, and terminating the agreement, the DOH shall first identify in writing the reasons why it intends to terminate the contract for cause and give the Contractor thirty (30) days to cure such perceived deficiencies in its performance."

A59. Section 4.12.2 should be read in conjunction with Appendix D, Section T on page 89 of this RFP. Sections 4.12.2 and Appendix D, Section T of this RFP meet the Department's requirements concerning contract termination.

Q60. Reference: Section 1.1 Introduction/ Section 4.4 Contractor Requirements

Contractor has reviewed the terms and conditions from the Request for Proposal (RFP). We believe that certain provisions included in the RFP should be clarified for this particular engagement and, therefore, have set forth in the text below clarification questions to specific terms and conditions of the RFP. Would the State agree that the New York State backdrop contract be referenced during this effort to facilitate bid by parties who have agreed to and executed the state OGS backdrop contract provisions?

A60. The original RFP language meets the Department's requirements.

Q61. Reference: n/a

We take exception to the lack of a warranty clause for deliverables produced as a result of this contract. We request a 30 warranty and no implied warranties.

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Questions and Answers (continued)

A61. The original RFP language meets the Department's requirements.

Q62. Reference: Section 4.5.2

At the beginning of Section 4.5.2, please insert the following: "Except for contractor's workpapers, which are and shall remain the exclusive property of contractor".

In addition, if the contractor's deliverables will include any pre-existing contractor proprietary methodologies, we propose inclusion of the following as a new paragraph Section 4.5.3:

"Notwithstanding the foregoing paragraphs 4.5.1 and 4.5.2, the Department shall not obtain any ownership interest in contractor concepts, ideas, methods, methodologies, procedures, processes, know-how and techniques, models, templates, and software tools, utilities, and routines that predate this Agreement. Such pre-existing Contractor intellectual property is and shall remain the exclusive property of Contractor. If any of the deliverables under this Agreement contain any of Contractor's pre-existing intellectual property, Contractor hereby grants the Department a royalty-free, paid-up, non-exclusive, perpetual license to use such pre-existing Contractor intellectual property in connection with the Department's use of the deliverables."

A62. The original RFP language meets the Department's requirements.

Q63. Reference: Section 4.14/ Section 4.5 Rights of the Department

Contractor agrees to assign ownership of work product specifically designed for and delivered to the Department in connection with the engagement. However, the parties' rights to maintain ownership of pre-existing intellectual property (including modifications) must be clarified and Contractor would request that the provisions in the backdrop contract for IT Services be used as the baseline to govern this issue. Will the State agree to this request?

A63. It is not anticipated that pre-existing intellectual property will be required as part of this contract. The original RFP language meets the Department's requirements.

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Q64. Reference:

We propose inclusion of the following limitation of liability provision, which is as follows:

“Contractor's maximum liability to the State of New York or the Department arising for any reason relating to Contractor's performance of this contract shall be limited to the amount of fees paid to Contractor for its performance. Neither party shall have any liability to the other party for any lost profits or special, incidental, indirect, consequential, or punitive damages, even if such party has been advised of the possibility of such damages.”

A64. *The Contractor will not be permitted to limit its liability for personal injury, including death, or damage to real or tangible personal property arising out of its negligence. For all other damages, the Contractor's liability shall not exceed two times the value of the contract.*

Q65. Reference: Section 1.1 Introduction/ Section 4.4 Contractor Requirements

Contractor agrees to use diligent efforts to meet the dates set forth in the Statement of Work, however, this will be a collaborative effort with the Department and the “time is of the essence” provision should be clarified such that it only applies to products and not services. If Contractor utilizes diligent efforts but does not meet such dates due to any act of the Department or its agents, it shall not be considered to have defaulted in its obligations hereunder. Will the State agree with this clarification?

A65. *The contractor will not be held in default due to any act of the Department or its agents.*

Q66. Reference: Section 4 Administrative

To properly manage the costs to the Department for this project, Contractor would like to discuss the inclusion of a limitation on direct and consequential damages in the resulting contract. Contractor would request that the backdrop contract for IT Services be used as the baseline for the provisions limiting damages. Will the State agree to this request?

A66. *The Contractor will not be permitted to limit its liability for personal injury, including death, or damage to real or tangible personal property arising out of its negligence. For all other damages, the Contractor's liability shall not exceed two times the value of the contract.*

Q67. Reference: Section 4.8 Indemnification of the Department

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Contractor would agree to indemnify the Department for certain damages to third parties. However, we believe that the indemnification obligation in this section is broader than what is customary in the industry and what is necessary to provide adequate protection to the Department. We would propose that this section be modified to place reasonable, commercially standard parameters on Contractor's indemnification obligations. Moreover, we would propose certain procedural terms to ensure that Contractor is given prompt notice of and the ability to effectively defend or settle, as appropriate, any indemnification claims. Contractor would request that the indemnification provision in the State backdrop contract for IT Services be applied to this project. Will the State agree to use the indemnification clause from State's backdrop contract?

A67. The original RFP language meets the Department's requirements.

Q68. Reference: Section 4.9 Access to and Audit of Agreement Records

Contractor recognizes the Department's need under certain circumstances to have the right to access certain books and records of its contractors; however, we would propose to establish reasonable limits on the audit rights contained in this Section, including protection of confidential personal information, and to clarify the appropriate types of records (invoices in support of fees paid) that Contractor is required to keep in light of the circumstances of the engagement. Will the State agree to this request?

A68. The original RFP language meets the Department's requirements.

Q69. Reference: Appendix D, paragraph C

We take exception to the unlimited liability clauses of the RFP and propose a limit of liability equal to one time fees paid.

A69. The Contractor will not be permitted to limit its liability for personal injury, including death, or damage to real or tangible personal property arising out of its negligence. For all other damages, the Contractor's liability shall not exceed two times the value of the contract.

Q70. Reference: Appendix D, paragraphs C, F, G, P, Q, and T

Can the Department define "satisfaction"? We request that objective approval criteria be established in lieu of "to the satisfaction of the Department".

A70. Because of the variety of circumstances involved, objective approval criteria cannot be adequately developed to address all contingencies. Moreover, the Department reserves the right to exercise its judgment in its evaluation of the acceptability of contractor's performance under the terms of the contract. The Department will not be unreasonable in its review of the contractor's performance.

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Questions and Answers (continued)

Q71. *Reference: Appendix D.L*

We take exception to the "Work for Hire" clause and request a license grant back for any work performed, and a provision protecting pre-existing contractor-owned materials.

A71. The original RFP language meets the Department's requirements.

Q72. *Reference:*

Are there any MWBE requirements associated with the business consultant project?

A72. See Appendix D, Section W on page 90 of this RFP for M/WBE requirements and Appendix A, Section 12 on page 82 of this RFP for Equal Employment Opportunities for Minorities and Women.