

**Replacement Medicaid Management Information System (R-MMIS) Questions and Answers
Group II
Questions 151 – 300**

<u>QUES #</u>	<u>RFP Page</u>	<u>RFP Reference</u>	<u>Question</u>	<u>Response</u>
151	III-132	J.1.5.2.1 Manage 1099s, Requirement 2	When taxpayer ownership changes, are providers required to obtain a new Tax ID and provider number prior to submitting claims?	Ownership changes must be reported to the Medicaid Program. IRS rules govern when a new TIN is required. Changes in ownership may or may not result in the issuance of a new Medicaid provider number.
152	III-133-134	J.1.5.2.2 Perform Accounting Functions	<p>Requirement 4.d says, “Describe how the web-based application will provide the capability to view and update a Public Goods Pool file which contains percentages and fixed dollar amounts used to calculate the NYS Medicaid Program’s contribution to the Public Goods Pool”</p> <ul style="list-style-type: none"> • Is the R-MMIS compiling the statistics for the DOH to provide the PGP data and display this data using this web-based application? • If yes, then what is the source of this data to the R-MMIS and how frequently is it provided by DOH to the R-MMIS vendor for updating of the web-based application of PGP information? • If the funding is annual by DOH, is the web based application required to calculate monthly the amount of PGP funds required and deduct it from the annual amount presenting a balance remaining until funding is used? • If funding is not adequate, is the R-MMIS required to automatically suspend or deny related transactions due to lack of PGP funds? • Please provide copies of current policies and procedures regarding flow and accumulation of both data and funds related to the Public Goods Pool. • Additionally, we request the Department to provide any information regarding future expectations of the Pool. 	<p>Regarding bullet one, no, this requirement does not deal with the compilation of statistics on the PGP data. The offeror must propose a solution that best meets the needs of the Department for maintaining the percentages and dollar amounts.</p> <p>Bullets three and four are not relevant to the intent of this requirement. Currently, the data in the Public Goods Pool file is used to generate reports on a quarterly basis to identify the amounts that need to be paid to the Public Goods Pool administrator by the Department. The actual payment of the funds is done by the Department, not the contractor.</p> <p>Regarding bullet five, please refer to the Finance TDD located in the R-MMIS Procurement Library.</p> <p>Regarding bullet six, the Department has no information at this time regarding future expectations of the Pool.</p>
153	III-135	J.1.5.3.1 Monitor Performance and Business Activities, Reporting Proposal	<p>The second requirement in this reporting list asks bidders to “Describe how the R-MMIS will produce all reports and/or files required to meet Federal CMS-64 reporting requirements.”</p> <p>Some components of the CMS-64 report will come from a source other than the R-MMIS. Please clarify which components</p>	The requirement is now amended to read: “Describe how the R-MMIS will produce all reports and/or files for which it is

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		Requirements, Requirement 2	of the CMS-64 are to be provided by the R-MMIS and which by the Data Warehouse?	responsible that are required to meet Federal CMS-64 reporting requirements.”
154	III-137	J.1 .5.4.1 Maintain Benefit/Reference Information Maintain Reference Data General Proposal Requirement	<p>TOPIC/ISSUE: Use of Revenue Codes in the New York Medicaid Program</p> <p>RFP TEXT: Revenue Code Proposal Requirement</p> <p>1. Describe how the R-MMIS will accept and process revenue code information from the National Uniform Billing Committee (NUBC);</p> <p>2. Describe how the web-based application will provide the capability to:</p> <ul style="list-style-type: none"> • inquire on, add and change revenue code information; and, • inquire on, add, delete and change revenue code pricing information <p>DISCUSSION: This requirement appears to be inconsistent with the current use of New York State proprietary Rate Codes for pricing. To modify the systems to accept and process Revenue Codes would be a huge undertaking, and would greatly complicate the DDI effort, and add significant costs.</p> <p>QUESTION(S): Is it the intention of the Department to continue the use of NYS</p>	<p>Yes, the Department will continue to use NYS proprietary Rate Codes.</p>

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			<p>proprietary Rate Codes in the R-MMIS?</p> <p>Would the Department please confirm that incorporation of Revenue Codes is a required functionality?</p> <p>If so, would the Department anticipate that the system would need to be capable of processing both Revenue codes and Rate codes for all applicable claim types?</p>	<p>Yes, revenue codes are required.</p> <p>Yes.</p>
155	III-139	<p>Section III R-MMIS SOW</p> <p>J.1.5.3</p> <p>ICD -10 Implementation</p> <p>Page III-139</p>	<p>Topic/Issue:</p> <p>ICD-10</p> <p>RFP Text:</p> <p>ICD -10 Implementation</p> <p>Discussion:</p> <p>The new R-MMIS will need to support both ICD-9 and ICD-10.</p> <p>Question(s):</p> <p>Will DOH provide the cross walk mapping for supporting both Versions?</p> <p>Will the current fiscal agent provide ICD-10 training as well? If so, to which entities will the ICD-10 training be provided?</p>	<p>The offeror should propose a solution that best meets the needs of the Department.</p> <p>Current training is not relevant to the R-MMIS.</p>
156	III-140	<p>Section III R-MMIS SOW</p> <p>J.1.5.3</p> <p>ICD -10 Implementation</p>	<p>Topic/Issue:</p> <p>ICD-10</p> <p>RFP Text:</p> <p>ICD-10 Implementation</p>	

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		Page III-140	<p>Discussion:</p> <p>Describe the health care professional expertise...</p> <p>Question(s):</p> <p>Does DOH have physicians available to support policy decisions or will this be a requirement of the contractor?</p> <p>If the Department wishes the contractor to provide such services, will the Department provide an estimate of the workload volumes that need to be accommodated, as well as the experience requirements for contractor staff who perform these functions?</p>	<p>The proposal requirement states "Describe the health care professional expertise that will be provided to support the policy decision making process". The policy decision making process referred to is related to support for the offeror's proposed approach to ICD-10 implementation. Since the requirements for workload will vary by the offeror's proposal, the offeror should propose a solution that will best meet the needs of the Department.</p>
157	III-141-142	<p>J.1.6.1 Establish Business Relationship</p> <p>J.1.6.2 Manage Business Relationship</p>	<p>Please provide the number of:</p> <ul style="list-style-type: none"> • Trading partners • ETINs • EFTs • Paper checks • Provider web portal users • Member web portal users • Rebate Labeler web portal users 	<p>Please see addendum to the R-MMIS Procurement Library.</p> <p>R-430-07136 Att1_Information.</p> <p>ID 39: Question 157.</p>
158	III-146	J.2.1 Functional Phase II Requirements, Overview	The RFP states that Functional Phase II includes 'implementing ICD-10 as well as a Financial Management System using a COTS product. Other areas of the RFP indicate that ICD-10 is to be implemented as part of Phase I – R-MMIS. Please clarify.	ICD-10 implementation will be part of the Phase I requirements. The Phase II Overview is now amended to read: "Functional Phase II includes the implementation of a COTS Financial Management System."
159	III-146	III.J.2.2 R-MMIS Financial Management System (R-MMIS FMS)	<p>TOPIC/ISSUE:</p> <p>Specifications for the Central Accounting System</p>	

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			<p>RFP TEXT:</p> <p>The Department's desire is to make use of standard functionality within a COTS solution to address all or the majority of the financial business processes. However, the complexities involved in the wide variety of financial transactions required to support the NYS Medicaid Program which are based on Federal and State laws and regulations may require functionality that is not available in a standard FMS. If required functionality is identified that is not available in the standard FMS, the contractor must provide an integrated solution that is acceptable to the Department.</p> <p>The R-MMIS Financial Management System (R-MMIS FMS) must provide financial management functions and information for the NYS Medicaid Program and an interface to the New York State Central Accounting System (CAS). Standard financial reports and an ad hoc reporting capability are expected as part of the proposed solution.</p> <p>The core financial management functions that are envisioned for the R-MMIS Financial Management System include:</p> <ol style="list-style-type: none"> 1. General Ledger (GL); 2. Accounts Payable (AP); 3. Accounts Receivable (AR); and, 4. Contracts Management (CO). <p>DISCUSSION:</p> <p>According to our understanding, this new CAS system is not yet implemented, nor are the detailed specifications available. .</p>	

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			<p>QUESTION(S):</p> <p>Would the Department consider deferring this RFP requirement until the specifications of the CAS have been finalized? Specifically, we are suggesting that the solution be developed as a Systems Change project, after a clear direction for the R-MMIS development work has been established.</p>	No.
160	III-150 and 77 of 81	Section III J.3.2 and Attachment P FPH3-3	<p>RFP Text</p> <p>Describe the approach to incorporating improvements currently identified by the Department as enhancements that would meet MITA maturity level 3.</p> <p>Question</p> <p>Please define "improvements currently identified by the Department." Does this refer to improvements identified by the Department in this RFP; improvements identified in the Department's MITA SS-A; or, improvements identified through the MITA Maturity Advancement gap analysis described elsewhere in this section?</p>	The section cited refers to improvements identified in the Department's SS-A which is available in the R-MMIS Procurement Library. As stated in the SS-A, these improvements are illustrative only of the direction in which the Department wants to move and do not constitute a definition.
161	III-150	Section III. K.1. Overview	<p>RFP Text</p> <p>The contractor must establish a primary facility in a location approved by the Department.</p> <p>Question</p> <p>Will the Department allow the primary facility to be outside the 10 mile radius of the Capitol if a secondary facility is inside the 10 mile radius?</p>	No.
162	III-150	Section III. K.1. Overview	<p>RFP Text</p> <p>The contractor must establish a primary facility in a location</p>	

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			<p>approved by the Department.</p> <p>Question</p> <p>Will the Department permit plans to be submitted for a new facility to be developed by the contractor?</p>	<p>The Department will allow any plan to be submitted that meets the facility and schedule criteria enumerated in the RFP.</p>
163	III-150	R-MMIS Statement of Work	<p>RFP Text</p> <p>The primary facility must be within ten (10) miles of the New York State Capitol building in Albany, New York.</p> <p>Question</p> <p>Would the state allow a bidder to utilize two separate buildings located in the same office campus to meet the primary facility requirements so long as the buildings were close in proximity on the same campus and within ten (10) miles of the New York State Capitol building in Albany, New York?</p>	<p>No. The original RFP language meets the needs of the Department.</p>
164	III-150	R-MMIS Statement of Work K.1 Overview	<p>RFP Text</p> <p>The contractor must establish a primary facility in a location approved by the Department. All work specified in this RFP (including but not limited to receipt of paper claims, generation of checks and Call Center Operations) is required to be performed in this facility. Exempt from this requirement are the activities performed in the New York City Office (defined below) and the actual computer operations and the required back-up and recovery facility. However, the primary facility may be combined with the computer facility as long as the computer facility is physically secured as required in this RFP.</p> <p>Question</p>	<p>The original RFP language meets the needs of the</p>

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			Please confirm that bidders must propose all work to be physically performed in the primary facility located in Albany, New York, with the exception of the work performed in the New York City Office and the actual and back-up and recovery data centers and that bidders may not propose to leverage other available operations centers outside of these requirements in order to provide a more competitive price	Department.
165	III-150	K. Facility Requirements	How many cubic feet of physical paper storage exists at the incumbent's and/or the State's facilities that will need to transition to the offeror's proposed facilities.	Please see addendum to the R-MMIS Procurement Library. R-430-07137 Att1_Information_2. ID 40: Question 165.
166	III-150	K. Facility Requirements	In the initial period of the contract, such as start-up period/planning phase, will the State have staff that will require facility space? If so, how many in that phase and in what timeframe will space be required to be ready for this portion of State staff? Additionally, when does the Albany operational facility/physical location for full state staff (as described in the RFP requirements) need to be available for usage?	The State will require workspace for a small project team (no more than 10 staff) within 14 business days of contract signing. The primary facility needs to be available within ninety (90) calendar days of contract signing.
167	III-150	K. Facility Requirements	Will State staff be located at the contractor's New York City office? If so, how many?	No.
168	III-150	K. Facility Requirements	The RFP states: "The contractor must establish a primary facility in a location approved by the Department. All work specified in this RFP (including but not limited to receipt of paper claims, generation of checks and Call Center Operations) is required to be performed in this facility. ...However, the primary facility may be combined with the computer facility as long as the computer facility is physically secured as required in this RFP." The RFP states: "7. Provide an uninterruptible power source (UPS) at both the primary and alternate sites with the capacity to support operation of the system and its components for 30 minutes and to ensure an orderly shutdown if necessary;" It appears that both the Operations facility and the main Computer facility may be described as the "primary" site in	

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			<p>different requirements.</p> <p>If Operational facility is in a separate building or physically secured from the computer facility sites, does this UPS requirement apply to the Operations facility used by the contractor?</p> <p>If so, is the Operational facility required to meet the same Uptime Institute Tier Level as the computer facility?</p>	<p>Yes, the UPS requirement applies to the Operations facility.</p> <p>Yes, the Operational facility is required to meet the same Uptime Institute Tier Level as the computer facility.</p>
169	III-150	K. Facility Requirements	Please provide how many cubic feet of physical paper storage exist at Iron Mountain.	<p>Please see addendum to the R-MMIS Procurement Library.</p> <p>R-430-07137 Att1_Information_2.</p> <p>ID 41: Question 169.</p>
170	III-150	K. Facility Requirements	Are there any other off-site locations that would be considered in-scope for the offeror to support? If so, what is the location, and how much is stored there?	No.
171	III-150	III.K.1	<p>TOPIC/ISSUE:</p> <p>Location of Mailroom/Print Activities</p> <p>RFP TEXT:</p> <p>FACILITY REQUIREMENTS</p> <p>The contractor must establish a primary facility in a location approved by the Department. All work specified in this RFP (including but not limited to receipt of paper claims, generation of checks and Call Center Operations) is required to be performed in t his facility. Exempt from this requirement are the activities performed in the New York City Office (defined below) and the actual computer operations and the required back-up and recovery facility. However, the primary facility may be combined with the computer facility as long as the computer facility is physically secured as required in this RFP.</p>	

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			<p>The primary facility must be within ten (10) miles of the New York State Capitol building in Albany, New York. All other facilities must be within the continental United States. When selecting the location of the primary, computer and disaster recovery sites, the offeror must take into consideration Service Level Agreements described in section III.O Contractor Performance.</p> <p>DISCUSSION:</p> <p>Many fiscal agent entities use service centers to perform certain functional activities on behalf of multiple government or commercial clients. This approach often entails the use of multiple facilities. In the request for proposal the requirement states, "all work specified is required to be performed in the primary facility."</p> <p>QUESTION(S):</p> <p>Would the state consider a secondary facility for mailroom, imaging and outgoing print within the 10 mile radius?</p>	No.
172	III-151	<p>Section III</p> <p>K.1. Overview</p>	<p>RFP Text</p> <p>Proposals must include an open floor plan at the primary location where contractor and Department staff (including Department contractor staff) can be intermingled based on functional areas.</p> <p>Question</p> <p>This sentence references staff being "intermingled based on functional areas." However, Attachment J, FAC-81, requires separate office suites. Please clarify whether the Department staff should be intermingled or should be in a separate suite.</p>	<p>The 41 OSC staff and the 3 federal staff will not be intermingled; they will reside within their own secure areas (office suite).</p> <p>The remaining state and contractor staff will be intermingled with the offeror's key, core and programming maintenance</p>

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				staff and the offeror's staff that will support the System Operational and Enhancement Phase. The requirements in the RFP for the Department Specific Requirements (FAC-122 through FAC-144) reflect the Department's needs for the space. The offeror should add any additional needs for their staff which are intermingled.
173	III-151	III.K.1	<p>TOPIC/ISSUE:</p> <p>Sharing of network equipment; provisions for personal computer hardware and software for State staff</p> <p>RFP TEXT:</p> <p>When proposing space, the contractor should look to increase efficiencies of the program and minimize administrative and program costs.</p> <p>DISCUSSION:</p> <p>We fully endorse the concept of efficiency in designing office space, however we want to be certain that the Department's expectations relative to this design be fully accommodated. As a result, we are unclear whether the state staff will be using shared resources such as printers, faxes, photocopiers, etc. This sharing would be consistent with the requirement to intermingle contractor and Department staff, although it is never explicitly set forth in the RFP.</p> <p>QUESTION(S):</p> <p>Is there an expectation that equipment and network resources such as copiers, printers, plotters, meeting places and conference rooms would be shared between contractor and state staff?</p> <p>Is the contractor expected to maintain personal computer</p>	<p>Yes, however the quantities specified in the RFP are for Department staff and State contractor staff. The R-MMIS contractor must add additional quantities for its staff needs</p> <p>Yes, hardware configurations at a minimum must include:</p> <p>Core i7, 16 gb Ram with Windows 7 Operating system.</p>

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			hardware and software for state staff? If so, please specify the requirements in terms of software packages and maintenance expectations, as well as personal computer configurations.	<p>512mb graphics, 1 tb HDD x 2 Raid 1, 1 DVD-RW dual layer; Blue Ray reader with the option to upgrade to Blue Ray Read-Write, Dual 19" LED or single 21" LED 1640x1280 aspect ratio. 1 gb network (NIC). Ergonomic keyboard, and mouse preferably trackball USB. 32 gb high grade encrypted USB flash drives.</p> <p>Software configurations must include at a minimum:</p> <p>Microsoft Office Suite 2007/2010, Microsoft Visio 2007, Microsoft Project 2007, Internet Explorer, Lotus Notes, Adobe Professional, Roxio CD creator, Winzip Pro 11, Symantec Ghost software Symantec Endpoint, Snag It, Java (application specific version(s)).</p>
174	III-151	III.K	<p>TOPIC/ISSUE:</p> <p>Procurement of facility space</p> <p>RFP TEXT:</p> <p>In addition, proposals must include strategies to rapidly procure adequate space for key and core state and contractor staff during the initial phases of project development.</p> <p>DISCUSSION:</p> <p>This requirement is certainly worthwhile, but it is generally stated, and does not provide bidders with a clear understanding of the Department's intentions.</p> <p>QUESTION(S):</p> <p>Would the Department please provide clarification as to its expectations and requirements for space procurement, including a timetable?</p>	<p>The State will require workspace for a small project team (no more than 10 staff) within 14 business days of contract signing. The primary facility needs to be available within</p>

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				ninety (90) calendar days of contract signing.
175	III-151	III.K.1	<p>TOPIC/ISSUE:</p> <p>Dedicated facility</p> <p>RFP TEXT:</p> <p>Proposals must include an open floor plan at the primary location where contractor and Department staff (including Department contractor staff) can be intermingled based on functional areas. This will facilitate and encourage a strong working relationship between them.</p> <p>DISCUSSION:</p> <p>Based on the facility requirements stated in RFP Section III K, particularly the requirement that Department staff be physically comingled with contractor staff, conduct of business activities other than R-MMIS work will be difficult, if not impossible, given the universal requirement to hold client data in strict confidence.</p> <p>QUESTION(S):</p> <p>Is the Department requiring that the contractor's primary location be a "dedicated" facility, or is the processing of other business activities allowed within this office space?</p>	The Department requires that the primary facility be a dedicated facility.
176	III-151	III. K.1 Facility Requirements; K.1 Overview	<p>TOPIC/ISSUE:</p> <p>Space standards for State Staff</p> <p>RFP TEXT:</p> <p>Proposals must include an open floor plan that is the primary location where the contractor and Department staff (including Department contractor staff) can be intermingled based on</p>	

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			<p>functional areas. This will facilitate and encourage a strong working relationship with them.</p> <p>The contractor's primary facility must be large enough to house its own entire staff, the training and meeting rooms defined in Attachment J and the following one hundred fourteen (114) State, contractor and Federal staff:</p> <ol style="list-style-type: none"> 1. 70 State and contractor staff attached to the Office of Health Insurance Program and Division of Systems; 2. 41 State and contractor staff attached to the OSC; and, 3. 3 Federal staff. <p>DISCUSSION:</p> <p>In order to provide adequate space for state (DOH, OSC) and Federal staff including state contractor staff, and for proper planning the Offeror needs to know what the DOH space standards are for Directors and Managers, general staff, conference rooms and meeting places.</p> <p>QUESTION(S):</p> <p>In order to provide adequate space and seating for State (DOH, OSC), Federal and State Contractor staff, please provide specific space standards for Directors, Managers, and general staff including:</p> <ul style="list-style-type: none"> • space standards (Director, Manager offices), • required workstations sizes for contractor and other staff (e.g., 8' x 8', etc.), and • number of conference rooms and meeting places to be 	<p>The original RFP language meets the needs of the Department. Please refer to the facility requirements in Attachment J of the RFP for detailed facility requirements.</p>

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			dedicated to State staff	
177	III-151	III. K.1 Facility Requirements; K.1 Overview	<p>TOPIC/ISSUE: Groupings of State Staff</p> <p>RFP TEXT:</p> <p>Proposals must include an open floor plan that is the primary location where the contractor and Department staff (including Department contractor staff) can be intermingled based on functional areas. This will facilitate and encourage a strong working relationship with them.</p> <p>The contractor's primary facility must be large enough to house its own entire staff, the training and meeting rooms defined in Attachment J and the following one hundred fourteen (114) State, contractor and Federal staff:</p> <ol style="list-style-type: none"> 1. 70 State and contractor staff attached to the Office of Health Insurance Program and Division of Systems; 2. 41 State and contractor staff attached to the OSC; and, 3. 3 Federal staff. <p>DISCUSSION:</p> <p>In order to "pair" state (DOH, OSC) and Federal staff including state contractor staff, and for proper planning the Offeror needs to know the functional areas and their relationship to the contractor staff so that the contractor can provide an open floor plan that will meet the "intermingled" requirement of the RFP.</p> <p>QUESTION(S):</p>	<p>The 41 OSC staff and the 3 federal staff will not be</p>

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			Please identify the Department's Organization Structure and groupings, and identify which Department staff are to be located with which of the contractor's functional organizations (e.g., which Department staff will be located with the contractor's call center, etc.).	intermingled; they will reside within their own secure areas. The remaining state and contractor staff will be intermingled with the offeror's key, core and maintenance staff and the offeror's staff that will support the System Operational and Enhancement Phase.
178	III-153	L. 4 R-MMIS Business Continuity & Disaster Recovery	RFP Text In the event that the failover solution cannot be successfully executed, the contractor must develop a Disaster Recovery Plan which will ensure the R-MMIS is operational at a second computer site within twenty-four (24) hours Question Is the Recovery Time Objective (RTO) for all production components of R-MMIS 24 hours?	 The RTO for the primary computer facility is immediate – See failover requirements in the RFP. The RTO for the disaster recovery site is 24 hours
179	III-154	M. Organization and Staffing Requirements	Please provide the locations of the fiscal agent staff that are not primarily located in Albany and New York City. We assume that this staff is primarily the Provider Outreach team members. If there is other remote staff, please indicate their roles and their locations.	The Department is relying upon the experience and expertise of the offeror to propose an adequate number of qualified staff in appropriate locations to satisfy the requirements in the RFP.
180	III-155	M.1 Overview to Section M Organization and Staffing Requirements	Concerning the requirement for Core Staff (49 persons) to be full-time: these positions (example: Pharmacy Educator or NY Rebate Attorney) may not require full-time participation. In the interest of providing the most productive and cost-effective team, will the Department consider allowing bidders to bid some of the core positions as part-time as long as the result is a Core staff of at least 49 full time equivalents?	No, the original RFP language meets the needs of the Department.

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181	III-157	M.4 Proposal Requirements, Question 4	Please identify the "stakeholder groups" and define the type of "technical assistance" expected for each stakeholder group.	The requirement to "describe the proposed organizational structure and staffing levels for providing stakeholders with technical assistance" relates to fulfilling the RFP requirements related to training and Change Management, and the various groups identified in the RFP training requirements.
182	III-157	M.4 PROPOSAL REQUIREMENT S	<p>TOPIC/ISSUE:</p> <p>Technical support for government personnel</p> <p>RFP TEXT:</p> <p>4. Describe the proposed organizational structure and staffing levels for providing stakeholders with technical assistance.</p> <p>DISCUSSION:</p> <p>We are concerned that providing the referenced technical assistance to State staff from various agencies and bureaus, as well as to Local Social Services District county and city staff, is not defined as to the content and breadth of the services to be provided, nor is the technical depth defined.</p> <p>QUESTION(S):</p> <p>We request that the Department define the scope of this activity in terms of the types of technical support to be provided, (e.g.; support for the use of R-MMIS applications) frequency of support, and whether support can be delivered by telephone from a centralized help desk. This information will allow offerors to provide adequate resources to meet the Department's expectations. As an alternative, would the Department specify headcounts and technical experience levels so that all bidders provide a consistent and standard resource?</p>	<p>The Department is open to a variety of solutions and the offeror should propose a solution that best meets the needs of the Department. Information related to training and support activities provided under the current contract is available in the monthly reports located in the addendum to the R-MMIS Procurement Library.</p>

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<u>QUES #</u>	<u>RFP Page</u>	<u>RFP Reference</u>	<u>Question</u>	<u>Response</u>
183	III-158	N. TRAINING REQUIREMENTS N.1 OVERVIEW	<p>TOPIC/ISSUE:</p> <p>Ongoing training resources</p> <p>RFP TEXT:</p> <p>The contractor is also required to provide on-going training throughout the life of the contract. Subsequent to the R-MMIS implementation, the contractor must support providers, LDSS staff and Department staff with remedial training, training on new functionality and training for new employees and new providers. The contractor must have a regional presence throughout the State and will be required to provide "elbow-to-elbow" training by traveling to LDSS and provider sites.</p> <p>Although the Department will require a certain amount of regional on-site, "elbow-to-elbow" training in the five regions of the state and the LDSS offices, the contractor is encouraged to propose other delivery mechanisms for training. Because of economic circumstances, fiscal constraints have been placed upon the state and LDSS staff restricting travel. These constraints will require innovative delivery mechanisms to minimize cost and travel.</p> <p>DISCUSSION:</p> <p>In order to provide the level of training stipulated in the RFP, the contractor must have a regional presence throughout the State. We are concerned that the scope of this activity is not sufficiently defined to allow bidders to include the appropriate resources in their fixed price bid proposals.</p> <p>QUESTION(S):</p> <p>We request that the Department define the scope of this activity in terms of the number of sessions, as well as durations, and locations, so that bidders are certain to provide adequate</p>	<p>The Department is open to a variety of solutions and the offeror should propose a solution that best meets the needs of the Department. Information related to training and support</p>

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			<p>resources to meet the Department’s expectations.</p> <p>As an alternative, would the Department specify headcounts and technical experience levels so that all bidders provide a consistent and standard resource?</p>	<p>activities provided under the current contract is available in the monthly reports located in the addendum to the R-MMIS Procurement Library.</p>
184	III-159	III-O CONTRACTOR PERFORMANCE REQUIREMENT S	<p>TOPIC/ISSUE:</p> <p>Assessment of damages</p> <p>RFP TEXT:</p> <p>The contractor must at all times operate the R-MMIS and perform its activities in conformity with the policies and procedures of the NYS Medicaid program. All requirements described in this RFP are subject to monitoring by the Department. The Department reserves the right to monitor performance at any time and may exercise such option, at its discretion, without notice. In the event of a failure to meet the performance requirements, the contractor agrees that the Department may assess and withhold from payments due its actual damages for the losses set forth below and as assessed at the Department’s discretion.</p> <p>DISCUSSION:</p> <p>This provision allows DOH to deduct “actual damages” from the contractor’s invoice, but does not provide a methodology for establishing the value of the actual damages.</p> <p>QUESTION(S):</p> <p>We would like to request that the Department revoke this contract requirement in favor of damages clauses that are specified in value according to the potential performance failure that might occur. Would the Department consider such a change in contract terms?</p>	<p>No, the original RFP language meets the needs of the Department.</p>

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185	III-162	O.2.1.1 System Availability	Please confirm that the requirement for 100 percent system availability does not include scheduled system maintenance required to apply software patches, application releases, or any other general maintenance.	The original RFP language meets the needs of the Department.
186	III-162	O.2.1.1 System Availability	Please provide the events and minutes of scheduled downtime, by subsystem, that eMedNY has experienced for the past 12-month period.	There has been no scheduled downtime in the last 12 months.
187	III-162	O.2.1.1 System Availability	<p>TOPIC/ISSUE:</p> <p>Downtime for UAT, ITF, and CERT</p> <p>RFP TEXT:</p> <p><u>Access Hours:</u></p> <p>7 am – 7 pm ET, six days /week (Monday – Saturday)</p> <p>Monthly system availability requirement is a minimum of ninety-eight percent (98%) for each environment</p> <p>DISCUSSION:</p> <p>Downtime for UAT, ITF, and CERT is allowed at the 2% level, but no measurement approach is stipulated in the RFP.</p> <p>QUESTION(S):</p> <p>We are assuming that this downtime will be measured on a cumulative monthly level, yielding about 16 hours per month to perform preventive maintenance, systems upgrades, etc. Would the Department please confirm that our understanding is correct?</p>	The original RFP language meets the needs of the Department.

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188	III-162 and III-164	O.2.1.1 System Availability table and O.2.1.2 Processing Performance table Image Retrieval	<p>Please provide the volumes of image retrievals by category that occur during a 24 hour period, by hour.</p> <p>This information will provide an understanding of the volumes that Offerors should anticipate and the peaks and valleys of image retrieval activity.</p>	<p>Please see addendum to the R-MMIS Procurement Library.</p> <p>R-430-07136 Att1_Information.</p> <p>ID 17: Question 188.</p>
189	III-162	O.2.1.1 System Availability	<p>TOPIC/ISSUE:</p> <p>SLA 1: Production Environment Hours of System Availability</p> <p>RFP TEXT:</p> <p><u>Access Hours:</u></p> <p>24 hours/day, 7 days a week</p> <p>System availability requirement is one-hundred percent (100%).</p> <p>\$1000/minute penalty for any disruption in production environment</p> <p>DISCUSSION:</p> <p>The standard relates to the hours that the production environment needs to be operational and available. This SLA also applies to the failover and disaster recovery environments also, when they are used for production. However, the term "disruption" is not defined (many instances of altered performance, even if temporary, could be characterized as "disruptions"), and there is no provision for approved maintenance window.</p> <p>QUESTION(S):</p> <p>We request that the term "disruption" be replaced with the term "unavailable" and that the standard not be applied until the</p>	<p>The original RFP language meets the needs of the</p>

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<u>QUES #</u>	<u>RFP Page</u>	<u>RFP Reference</u>	<u>Question</u>	<u>Response</u>
			systems are unavailable for a reasonably short period, (e.g., 5 minutes).	Department.
190	III-162	O.2.1.1 System Availability	<p>TOPIC/ISSUE:</p> <p>SLA 2: User Acceptance Test, ITF and CERT Environments Hours of System Availability</p> <p>RFP TEXT:</p> <p><u>Access Hours:</u></p> <p>7 am – 7 pm ET, 6 days/week (Monday – Saturday)</p> <p>Monthly system availability requirement is a minimum of ninety-eight percent (98%) for each environment</p> <p>\$500/minute penalty for any disruption in User Acceptance Test, ITF and CERT environments</p> <p>DISCUSSION:</p> <p>The standard relates to the hours that the environments need to be operational and available. However, the term "disruption" is not defined (many instances of altered performance, even if temporary, could be characterized as "disruptions").</p> <p>QUESTION(S):</p> <p>We request that the term "disruption" be replaced with the term "unavailable" and that the standard not be applied until the systems are unavailable for a reasonably short period, (e.g., 5 minutes).</p>	<p>The original RFP language meets the needs of the Department.</p>
191	III-162	O.2.1.1 System Availability	<p>TOPIC/ISSUE:</p> <p>SLA 3: Provider Test</p>	

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			<p>RFP TEXT:</p> <p><u>Access Hours :</u></p> <p>24 hours/day, 7 days a week</p> <p>Monthly system availability requirement is a minimum of ninety-eight percent (98%).</p> <p>\$500/minute penalty for any disruption in provider test environment</p> <p>DISCUSSION:</p> <p>The hours that the environment needs to be operational and available. This penalty potentially overlaps and compounds the other environment penalties (e.g., the production and test environment penalties). This penalty seems severe at \$30,000 per hour for a test environment (or \$720,000 per day). Also the term "disruption" is not defined.</p> <p>QUESTION(S):</p> <p>We request that the term "disruption" be replaced with the term "unavailable" and that the standard not be applied until the systems are unavailable for a reasonably short period, (e.g., in this case 15 minutes), and that the penalty be reduced to no more than \$5,000 per day.</p> <p>Also, will the provider test environment include all on-line transactions, including real-time pharmacy, as well as batch transactions and what form of response is required back to the providers (currently, only remittances are returned, and not 999 or 997 transactions).</p>	<p>The original RFP language meets the needs of the Department.</p> <p>Yes.</p>

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192	III-162	O.2.1.1 System Availability	<p>TOPIC/ISSUE:</p> <p>SLA 4: Production Environment R-MMIS Dashboard</p> <p>RFP TEXT:</p> <p><u>Access Hours:</u></p> <p>Accessible by Department staff between 7 am – 7 pm ET, 5 days/week (Monday – Friday)</p> <p>Monthly system availability requirement is a minimum of ninety-eight percent (98%).</p> <p>\$500/minute penalty for any disruption in the production dashboard</p> <p>Discussion:</p> <p>This would seem to be an extreme penalty for a non-production application (penalty is \$30,000 per hour or \$720,000 per day). Also, this penalty would seem to compound several other penalties because if the production environment was not available, this penalty would seem to apply automatically.</p> <p>QUESTION(S):</p> <p>We request that this penalty be removed in cases where the production systems are unavailable and the penalty for that failure is being applied. In events where this penalty is to be applied, we request that the standard not be applied until the systems are unavailable for a reasonably short period, (e.g., in this case 15 minutes), and that the penalty be reduced to no more than \$5,000 per day.</p>	<p>The original RFP language meets the needs of the Department.</p>
193	III-162	O.2.1.1 System Availability	<p>TOPIC/ISSUE:</p> <p>SLA 5: Image Retrieval System</p>	

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			<p>RFP TEXT:</p> <p><u>Access Hours:</u></p> <p>24 hours/day, 7 days a week</p> <p>System availability requirement is one-hundred percent (100%).</p> <p>\$1,000 per hour or any portion thereof</p> <p>DISCUSSION:</p> <p>The term "system availability" is not defined as it relates to this SLA and needs to be defined in terms response times. Additionally, the need for 24x7 availability seems unnecessary and will add substantially to the cost for these systems.</p> <p>QUESTION(S):</p> <p>We request that the Department change the availability window to 7 am to 7 pm ET, Monday through Friday. We request that the term "availability" be defined as "image does not appear within 5 minutes".</p>	<p>The original RFP language meets the needs of the Department.</p>
194	III-163	O.2.1.2 Electronic Claims Adjudication	<p>TOPIC/ISSUE:</p> <p>Clarification of performance standard for Electronic Claims Adjudication</p> <p>RFP TEXT:</p> <p>Adjudicate a minimum of ninety-eight percent (98%) of all claims within one (1) calendar day of receipt. Time during which claims are under review by the Department will not count toward the adjudication</p> <p>DISCUSSION:</p> <p>The requirement presented in this RFP section is to adjudicate</p>	

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			<p>98% of claims in 1 calendar day and there is no stated differentiation between online and batch electronic submissions. In order to meet this requirement for batch claims submissions, bidders would need to procure significant processing resources. It should be noted that a penalty of \$.25 per claim would run to tens of millions per week if all batch claims took as little as two days to adjudicate.</p> <p>QUESTION(S):</p> <p>Please clarify whether batch submissions are to be included in this standard.</p>	Yes.
195	III-163	O.2.1.2 Processing Performance	<p>TOPIC/ISSUE:</p> <p>SLA 6: Electronic Log Files</p> <p>RFP TEXT:</p> <p>The contractor must maintain the necessary data in log files to measure its performance against the SLAs defined in this RFP.</p> <p>If the Department notifies the contractor that damages will be assessed because of nonconformance with an SLA and the log files are not maintained or are damaged in such a way that the contractor cannot substantiate its performance against an SLA it will be construed that the contractor did not meet the SLA in question</p> <p>The damages for the appropriate SLA will be assessed.</p> <p>DISCUSSION:</p> <p>This implies that SLAs are missed if logging is not available, potentially large penalties could be assessed even though systems are available and functioning properly, simply because log file is not available. This also adds substantial cost to</p>	

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			<p>maintain redundant automated logging applications and long-term archiving for the log files.</p> <p>QUESTION(S):</p> <p>We request that the requirement to maintain logging files be decoupled from the penalties associated with the SLAs that are being logged, and that there be a reasonable timeframe of retention relating to the maintenance of the log files (e.g., 6 months).</p>	<p>The original RFP language meets the needs of the Department.</p>
196	III-163	O.2.1.2 Processing Performance	<p>TOPIC/ISSUE:</p> <p>SLA 7: Electronic Claims Adjudication</p> <p>RFP TEXT:</p> <p>Adjudicate a minimum of ninety-eight percent (98%) of all claims within one (1) calendar day of receipt. Time during which claims are under review by the Department will not count toward the adjudication standard.</p> <p>\$.25/claim for each claim that was not adjudicated within one (1) calendar day of receipt.</p> <p>DISCUSSION:</p> <p>This standard should only be applied to on-line real-time submissions, and not to very large batches. At currently levels eMedNY processes approximately 8,000,000 claims per cycle, the potential penalty here would be \$2,000,000 for a single cycle. This SLA would be compounded by other production-related SLAs in cases where the system is not performing at rated levels.</p> <p>QUESTION(S):</p>	

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			We request that the language be changed to state so that “Adjudicate” be changed to “Process” to recognize that non-clean claims (e.g., pending claims) are not “adjudicated”. We also request this potential penalty be reconsidered and subject to a reasonable daily cap (e.g., \$10,000).	The original RFP language meets the needs of the Department.
197	III-163	O.2.1.2 Processing Performance	<p>TOPIC/ISSUE:</p> <p>SLA 9: Claims Payment</p> <p>RFP TEXT:</p> <p>Perform payment cycles as frequently as once a day on a schedule approved by the Department.</p> <p>5% of the total amount of paid claims in payment cycle</p> <p>DISCUSSION:</p> <p>Full payment cycles, including financial processing and check/payment generation require, more than one day to execute end-to-end. Also, current weekly cycle average payout for claims = \$750,000,000 and 5% = \$37,500,000 per week. If this were to be scaled to daily to a 5 day week you could approximate this to be \$150,000,000 and a potential penalty of \$7,500,000 for one missed daily payment cycle.</p> <p>QUESTION(S):</p> <p>We request that this requirement be restated to require no more than 3 payment cycles per week. We request that the potential penalty be subject to a reasonable cap of no more than \$10,000</p>	The original RFP language meets the needs of the Department.

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			per occurrence.	
198	III-163	O.2.1.2 Processing Performance	<p>Topic/Issue: SLA Requirements</p> <p>RFP Text: N/A</p> <p>Discussion: The current requirement is to only process 1 claim at a time for a member. The current eMedNY system receives multiple claims for the same member at the same time. This requires a single transaction for that member to be allowed to process at a time causing the other transactions for that same member to be queued until the preceding transaction is completed. It is recommended that the Department measure SLA time for each of these transactions from the time they were cleared for processing until their processing was completed.</p> <p>Question: How does the SLA response time requirement map into the possibility that multiple claims for the same recipient will arrive simultaneously?</p>	<p>The current eMedNY requirements are not relevant to the R-MMIS. R-MMIS is based upon transactions; multiple claims for the same member, if received simultaneously, must be processed as unique transactions in accordance with the RFP requirements.</p>
199	III-163-4	O.2.1.2 Processing Performance	<p>Topic/Issue: SLA 13: Pricing Reference Files</p>	

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			<p>RFP Text:</p> <p>Batch files containing reference data required to price claims must be processed on the date specified by the Department.</p> <p>Amount of any payment overpayment or underpayment for claims processed using out-dated files plus ten percent (10%)</p> <p>Discussion:</p> <p>There are several reference files that price claims. This is a significant uncapped potential penalty for claim dollars and additional compounding percentage penalty. It appears that even if mispayments are adjusted and recouped you will still be penalized 10%.</p> <p>Question(s):</p> <p>We request that this penalty be removed, as any mispayed claims will be adjusted and the mispayments recouped from or paid to the providers.</p>	<p>The original RFP language meets the needs of the Department.</p>
200	III-163	<p>Section III R-MMIS SOW</p> <p>O.2.1.2 Processing Performance</p> <p>Page III-163</p>	<p>Topic/Issue:</p> <p>Adjudicate 98% of all claims.</p> <p>RFP Text:</p> <p>“Electronic Claims Adjudication”</p> <p>Discussion:</p> <p>Currently in the NY Medicaid program we understand, ‘adjudicated’ means pay or deny. If a file is sent in and is improperly formatted for quick and accurate adjudication should these files all be sent back or should remediation take place in house?</p>	

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			<p>Question(s):</p> <p>Will claims that are pended because of state policies be considered adjudicated?</p> <p>If the file is unacceptable and returned, does this mean it has been adjudicated?</p> <p>Does one calendar day of receipt mean one day from a readable file being sent?</p> <p>Are retros and encounters considered part of the "all claims" requirements?</p>	<p>No.</p> <p>Yes.</p> <p>One calendar day means 24 hours from receipt of file.</p> <p>Retros are not, encounters are.</p>
201	III-163	<p>Section III R-MMIS SOW</p> <p>O.2.1.2 Processing Performance</p> <p>Page III-163</p>	<p>Topic/Issue:</p> <p>Inbound files</p> <p>RFP Text:</p> <p>"Process inbound files within 16 hours of receipt"</p> <p>Discussion:</p> <p>The words "process" and "receipt" need to be defined.</p> <p>Question(s):</p> <p>Please define "receipt" and "process" in the context of this requirement.</p> <p>Does this mean just validating the file was received and the claims can start the adjudication process?</p>	<p>'Receipt' refers to when the inbound file communication/transfer is complete; 'process' is the application of the appropriate system updates.</p> <p>This SLA governs inbound files that do not have other explicit SLA requirements.</p>
202	III-163	<p>O.2.1.2 Processing</p>	<p>Topic/Issue:</p> <p>SLA 11: Drug Rebate (OBRA and Supplemental) Receipt</p>	

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		Performance Page 163	<p>Processing</p> <p>RFP Text:</p> <p>Post Drug Rebate Invoice payments within forty-eight (48) hours of Contractor receipt.</p> <p>\$100 per payment not posted within forty-eight (48) hours of Contractor receipt.</p> <p>Discussion:</p> <p>There are currently over 500 labelers enrolled in the OBRA rebate program and all manufacturers have an obligation to pay not later than 38 days from invoice postmark date, in order to avoid interest accrual. This can lead to high volume of payment postings at the payment deadline.</p> <p>Question(s):</p> <p>Can the SLA be clarified that the posting of payment within 48 hours be to the labeler year and quarter level and that full NDC-11 posting be achieved within 96 hours, to ensure substantial time to allocate properly. This is also requested in light of the fact that CMS has not released rebate rates for 2010Q1 and may not for 2010Q2, resulting in additional keying of paid rates by the manufacturers in the payment allocation process.</p>	The original RFP language meets the needs of the Department.
203	III-164	Section III R-MMIS SOW O.2.1.2 Processing Performance Page III-164	<p>Topic/Issue:</p> <p>Image Retrieval</p> <p>RFP Text:</p> <p>The time it takes to get a viewable image to the user.</p> <p>Discussion:</p>	

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			N/A Question: The SLA does not take into account the size of the image. We recommend changing this section to refer to the time it takes to return the first byte of the image.	The original RFP language meets the needs of the Department.
204	III-164	O.2.1.2 Processing Performance	Please define the average image specification, for example number of pages, DPI, image size (KB).	For current specifications please see addendum to the R-MMIS Procurement Library. R-430-07137 Att1_Information_2. ID 42: Question 204.
205	III-164	O.2.1.2 Processing Performance	Please provide how many ports are currently configured on the IVR and ARU?	Please see addendum to the RMMIS Procurement library. R-430-07137 Att1_Information_2. ID 43: Question 205. However, the current network design is not relevant to the R-MMIS. The offeror should provide a network design in its proposal based upon its proposed R-MMIS that best meets the needs of the Department.
206	III-164	O.2.1.2 Processing Performance, OPR-15	Please provide a listing of all 800 and toll free numbers for providers, members and rebate labelers that access the IVR and ARU today.	The current network design is not relevant to the R-MMIS. The offeror should provide a network design in its proposal based upon its proposed R-MMIS that best meets the needs of the Department.
207	III-164	O.2.1.2 Processing Performance: Image Retrieval	To meet the expected response time requirement for Image Retrieval, will the State please define the average image size to better estimate the requirements for system performance? For example: The average image retrieval is three pages at 200 DPI which translates to an average file size of about 100KB.	Please see addendum to the R-MMIS Procurement Library. R-430-07136 Att1_Information. ID 18: Question 207.
208	III-164	O.2.1.2 Processing	Topic/Issue:	

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		Performance	<p>SLA 14: Outbound File to MDW</p> <p>RFP Text:</p> <p>Process outbound files at a minimum daily to feed MDW.</p> <p>\$100,000 per file</p> <p>Discussion:</p> <p>This is a potentially significant penalty - there are more than 300 outbound files to the Data Warehouse. This penalty alone, could amount to more than \$30,000,000 for one day. In the unlikely event that files are not transferred timely, the Data Warehouse would still be able to function effectively using the prior days' files.</p> <p>Question(s):</p> <p>We request this potential penalty be reduced to reflect the actual impact of delayed file processing, and that a reasonable cap be applied to this SLA (e.g., \$10,000 per day). We also request that specific key files be identified as subject this standard, and not all files be considered applicable.</p>	The original RFP language meets the needs of the Department.
209	III-164	O.2.1.2 Processing Performance	<p>TOPIC/ISSUE:</p> <p>SLA 16: Notification of errors of inbound and outbound files reconciliation</p> <p>RFP TEXT:</p> <p>Support and monitor the processing of transaction files and notify the Department of all transactions that have not been processed successfully. This notification must take place no later than one (1) business day of transaction processing date.</p>	

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			<p>\$5,000 for each occurrence of failure to notify the Department</p> <p>DISCUSSION:</p> <p>This standard should be reworded to say: "notify the department of all transaction FILES that have not been processed successfully" because it appears to address inbound/outbound file processing and not Medicaid transactions. Also this penalty seems extreme in relation to the actual event, typically files not successfully processed are reprocessed until successful and the notifications and interactions made in regard to the file submitters. There would not seem to be an actual damage suffered if, for some reason, the Department was not notified.</p> <p>QUESTION(S):</p> <p>We request that the SLA be reworded to address the topic of files (and to specify that these are reference files and not provider submitted files - and also not "transactions"), and that the potential penalty be reduced to no more than \$5,000 collectively, per day, for all files.</p>	The original RFP language meets the needs of the Department.
210	III-164	<p>Section III R-MMIS SOW</p> <p>O.2.1.2 Processing Performance</p> <p>Page III-164</p>	<p>Topic/Issue:</p> <p>Process outbound files daily to feed MDW.</p> <p>RFP Text:</p> <p>Process outbound files at a minimum daily to feed MDW.</p> <p>Discussion:</p> <p>The word "process" needs to be clarified. If it is the creation of a file that is ready to be transferred but has not been transferred due to external obstacles beyond the control of the R-MMIS contractor, then that is the responsibility of the receiving</p>	

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			<p>contractor or likewise responsible party. The R-MMIS cannot be responsible for problems outside of its control.</p> <p>Question(s):</p> <p>What is the definition of 'process', in the context of this requirement?</p> <p>Will the Department provide relief to the R-MMIS contractor when failure to process is the fault of an external entity?</p>	<p>For the purpose of enforcing this SLA, outbound files to the MDW will be considered processed if they have been created and the R-MMIS contractor is fully capable of transferring the files, but the MDW contractor is not able to accept the transfer.</p>
211	III-165	<p>Section III R-MMIS SOW</p> <p>O.2.1.2.1 Batch Processing Performance</p> <p>Page III-165</p>	<p>Topic/Issue:</p> <p>Eligibility Transactions</p> <p>RFP Text:</p> <p>98% of all eligibility batch files received prior to 3 a.m. must be processed by 8 a.m. the same day</p> <p>Discussion:</p> <p>Abnormally large batch eligibility files may create significant backlogs in eligibility determination.</p> <p>Question(s):</p> <p>Will the Department consider limiting the size of eligibility files to accommodate the processing requirements?</p>	<p>No. The original RFP language meets the needs of the Department.</p>
212	III-165	O.2.1.2.1 Batch Processing Performance	<p>TOPIC/ISSUE:</p> <p>SLA 22: All Other Batch Transactions</p> <p>RFP TEXT:</p>	

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			<p>One hundred percent (100%) of all batch files containing provider initiated transactions must be processed within 24 hours of receipt of batch transactions.</p> <p>\$1,000 per eligibility file not processed within the appropriate time</p> <p>DISCUSSION:</p> <p>It appears that some text was copied from the previous SLA and that this SLA should reference "OTHER BATCH FILE" and not "eligibility file".</p> <p>QUESTION(S):</p> <p>We request that the terminology for the SLA be changed to reference "other batch file".</p>	<p>The SLA for All Other Batch Transactions is now amended to read: "\$1,000 per other batch file not processed within the appropriate time".</p>
213	III-166	O.2.1.2.1.2 Real-Time Transaction Performance	<p>TOPIC/ISSUE:</p> <p>SLA 23: All Real-time Transactions including but not limited to: Web Portal, Web based applications, other real-time connections</p> <p>RFP TEXT:</p> <p>Response time for users accessing the R-MMIS via real time transactions must not be greater than two (2) seconds for at least ninety percent (90%) of the transactions and no response time must be greater than five (5) seconds.</p> <p>The contractor must meet this SLA for each day during both peak hours and non-peak hours. The SLA is measured daily and reported monthly.</p> <p>\$5,000 per hour or any portion thereof that response time does</p>	

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			<p>not meet the times designated</p> <p>DISCUSSION:</p> <p>The 5 second response time penalty is currently waived for eMedNY due to large submissions for the same recipients locking rows - the SLA could be met but it would require providers to split up batch submissions that include numerous records for a single recipient. Regardless of system architecture, this standard could not be met for submissions containing large numbers of claims for a single recipient. Also, the daily measurement technique does not reconcile with the per-hour penalty.</p> <p>QUESTION(S):</p> <p>We request that this 5 second portion of this standard be removed. We also request that there be a daily cap to the penalty for this SLA of \$10,000.</p>	<p>Issues with productivity problems in eMedNY are not relevant to the SLAs for operations of the R-MMIS. The Department expects the contractor to develop innovative solutions to meet the Department's objectives. The RFP language meets the needs of the Department.</p>
214	III-166	<p>Section III R-MMIS SOW</p> <p>O.2.1.2.2 Real-Time Processing Performance</p> <p>Page III-166</p>	<p>Topic/Issue:</p> <p>Real Time Transactions</p> <p>RFP Text:</p> <p>"Response time for users ...via real time transactions must not be greater than two seconds..."</p> <p>Discussion:</p> <p>The response time should be measured when the request hits the system and system returns the response. External issues surrounding wireless communication, external line speed, etc. should not be considered within the SLA</p> <p>Question(s):</p>	

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			Is "response time" defined as the time between when a request hits the system and the system is ready to transmit a response?"	No. Response time is defined as the time between when a request hits the system and the system has transmitted the response.
215	III-166	Section III R-MMIS SOW O.2.1.2.2 Real-Time Transaction Performance Page III-166	Topic/Issue: Real-Time Transactions RFP Text: Response time for user accessing the R-MMIS via real time transactions must not be greater than two (2) seconds for at least ninety percent (90%) of the transactions and no response time must be greater than five (5) seconds. Discussion: N/A Question: Because highly complex and/or very large transactions may require more than 5 seconds to process, we recommend that the (5) second SLA be scaled based on transaction type, complexity, and size. Given general acceptance of the base SLA, would the State consider a scaled approach for the "over 5 seconds" exceptions?	The original RFP language meets the needs of the Department.
216	III-167	O.2.1.3 Customer Service Center	TOPIC/ISSUE: SLA 25a: Call Center Responsiveness RFP TEXT: <u>Average Speed to Answer</u> : Calls must be answered within three	

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			<p>(3) rings or fifteen (15) seconds. If an automatic voice system is used as an initial response to inquiries, an option must exist that allows the caller to speak directly with an operator. Total hold time for an operator shall be equal to no more than two (2) minutes for ninety-eight percent (98%) of the calls that are put on hold for the daily peak and non-peak times.</p> <p>\$1,000 per hour or any portion thereof that the calls are not serviced as per the SLA</p> <p>DISCUSSION:</p> <p>This service level appears to measure the average speed in which agents answer calls. An answer is defined as an agent speaking to a caller. 98% is very aggressive (current SLA is 90%) and meeting this SLA 24x7 will require significant additional staff beyond that currently used to meet the 90% requirement. Also, the current standard is measure monthly, revising this to an hourly measurement, especially considering peaks, will lead the contractor to overstaff this function along with the related costs. Further, the actual reasons that can cause peaks to occur are often related to state policy changes or implementations of new program functionality, there are no exceptions allowed for these non-contractor caused peaks.</p> <p>QUESTION(S):</p> <p>We request the Department consider the impacts to contract pricing relating to meeting this standard on an hourly basis 24x7x365, and consider revising the terms and penalty of this SLA (in other words we request that compliance with this SLA be measured weekly or monthly, and that the maximum penalty be \$10,000 per day). We request that the Department allow for exceptions to the SLA in instances where there are major changes to the program or unanticipated anomalies in call patterns.</p>	<p>The original RFP language meets the needs of the Department.</p>
217	III-167	O.2.1.3 Customer	TOPIC/ISSUE:	

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		Service Center	<p>SLA 25b: Call Center Responsiveness</p> <p>RFP TEXT:</p> <p><u>Hold Time:</u> At least ninety-eight percent (98%) of the callers that are placed on hold for the daily average at peak time and non-peak time cannot remain on hold for more than thirty (30) seconds. This SLA will be measured daily but reported out monthly.</p> <p>\$1,000 per hour or any portion thereof that the calls are not serviced as per the SLA</p> <p>DISCUSSION:</p> <p>This service level appears to measure the total amount of time a customer spends on hold. However, this appears to conflict with the average speed of answer requirement of not being on hold for more than 2 minutes in another SLA (the average speed to answer SLA). Also it is not possible to report on a percentage based on an average. This SLA reads as answering 98% of calls within 30 seconds on average, but the SLA is measured daily with the same hourly or portion thereof when the SLA is not met.</p> <p>QUESTION(S):</p> <p>We request that this SLA be removed in favor the "average speed to answer" SLA 25a.</p>	The original RFP language meets the needs of the Department.
218	III-167	O.2.1.3 Customer Service Center	<p>TOPIC/ISSUE:</p> <p>SLA 26: Call Center Responsiveness</p> <p>RFP TEXT:</p> <p><u>Telephone Abandonment Rate:</u> The percentage of incoming</p>	

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			<p>calls to the Contractor's telephone line in which the caller disconnects prior to the call being answered by a customer service representative will not exceed three percent (3%), calculated for the daily peak and non-peak times. This SLA will be measured daily but reported out monthly.</p> <p>\$1,000 per hour or any portion thereof that the calls are not serviced as per the SLA</p> <p>DISCUSSION:</p> <p>This SLA penalizes the contractor when callers hang up, even when the callers have been on the phone for a brief period. This SLA seems to conflict with the SLA that requires phones to be answered within 2 minutes. The contractor cannot control the behavior of callers and should not be penalized beyond the standard permitted answer time of 2 minutes. Further, there is no allowance for program changes such as policy changes, edit disposition changes, or unanticipated external events such as epidemics or other public health issues. Additionally, the hourly measurement criteria will necessitate overstaffing during both peak and non-peak times to insure against SLA failure. .</p> <p>QUESTION(S):</p> <p>We request that the penalty for this SLA be calculated on a weekly or monthly basis and that the maximum penalty be subject to a cap of \$10,000 per month.</p>	<p>The original RFP language meets the needs of the Department. Offerors are reminded that per Section III.O of the RFP (emphasis added), "In the event of a failure to meet the performance requirements, the contractor agrees that the Department may assess and withhold from payments due its actual damages for the losses set forth below and <u>as assessed at the Department's discretion.</u>"</p>
219	III-167	Section III R-MMIS SOW O.2.1.3	<p>Topic/Issue:</p> <p>Call Center Responsiveness</p>	

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		Customer Service Center Page III-167	<p>RFP Text:</p> <p>“...caller disconnects prior to the call being answered by a customer service representative will not exceed three percent...”</p> <p>Discussion:</p> <p>The R-MMIS contractor has no control over a provider disconnecting. The abandon rate should be invoked after two minutes of hold time has been exceeded.</p> <p>Question(s):</p> <p>We request the Department add the phrase “if the call has exceeded two minutes on hold.”</p>	The original RFP language meets the needs of the Department.
220	III-167	Section III R-MMIS SOW O.2.1.3 SLA Page III-167	<p>Topic/Issue</p> <p>“Hold times” are used interchangeably in the “average speed to answer” and “Hold Time” category that are reflected in the Call Center Responsiveness service level agreement section of the RFP. Hold times can be referred to a caller holding to reach an agent or being placed on “hold” during the initial conversation/call.</p> <p>The average speed to answer SLA does not reflect the frequency (daily/weekly/monthly) of how this SLA will be measured and reported.</p> <p>RFP Text</p> <p>At least ninety-eight percent (98%) of the callers that are placed on hold for the daily average at peak time and non peak time cannot remain on hold for more than thirty (30) seconds. This</p>	

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			<p>SLA will be measured daily but reported out monthly.</p> <p>Discussion:</p> <p>N/A</p> <p>Question:</p> <p>Please clarify the meaning of “callers placed on hold” that is noted in the “Hold Time” category. For example, is “hold time” based on the maximum amount of time that an agent may place the caller on “hold” during the actual call (once the call is received/answered)?</p> <p>What is the frequency (daily/weekly/monthly) of which the average speed to answer SLA will be measured and reported?</p>	<p>“Callers placed on hold” in the hold time category is a caller who is speaking to a call center agent and is placed on hold by that agent. The maximum hold time per occurrence is thirty (30) seconds for 98%.</p> <p>The total hold time per call is 2 minutes. (4 occurrences)</p> <p>The SLA will be measured daily but reported out monthly.</p>
221	III-168	O.2.1.3 Customer Service Center	<p>TOPIC/ISSUE:</p> <p>SLA 27: Call Center Responsiveness</p> <p>RFP TEXT:</p> <p>Maintain a sufficient number of toll free telephone lines and personnel to staff the lines so that no more than two percent (2%) of incoming calls for the daily average at peak time and non-peak time ring busy</p> <p>\$1,000 per hour or any portion thereof that the calls are not serviced as per the SLA</p> <p>DISCUSSION:</p> <p>This SLA penalizes the contractor when callers receive a busy signal on an hourly basis. Further, there is no allowance for</p>	

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			<p>program changes such as policy changes, edit disposition changes, or unanticipated external events such as epidemics or other public health issues. Additionally, the hourly measurement criteria will necessitate overstaffing during both peak and non-peak times to insure against SLA failure. .</p> <p>QUESTION(S):</p> <p>We request that the penalty for this SLA be calculated on a weekly or monthly basis and that the maximum penalty be subject to a cap of \$10,000 per month.</p>	<p>The original RFP language meets the needs of the Department. Offerors are reminded that per Section III.O of the RFP (emphasis added), "In the event of a failure to meet the performance requirements, the contractor agrees that the Department may assess and withhold from payments due its actual damages for the losses set forth below and <u>as assessed at the Department's discretion.</u>"</p>
222	III-170	<p>O.2.1.4</p> <p>OBRA Supplemental and Supply Rebates</p> <p>Page III-170</p>	<p>Topic/Issue:</p> <p>Receipt of all required input to the Drug Rebate invoice generation process.</p> <p>RFP Text:</p> <p>Generate and transmit Drug Rebate Invoices no later than 60 calendar days after the end of the quarterly rebate period.</p> <p>Discussion:</p> <p>The requirement is to generate drug rebate invoices within 60 days of the end of the quarter being billed. Historically, CMS send the quarterly URA file 45 days after the quarter ends, which gives States 15 days to complete the invoicing process by the 60th day. There have been instances when this standard could not be met due to delays in receipt of required input files from CMS. Specifically, the 2009Q3 file was not received until 11/23/09 and the 2009Q4 file was not received until 5/24/10</p>	

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			<p>which did not allow for 15 days to prepare the invoices.</p> <p>Question(s):</p> <p>Should CMS not be able to provide the CMS URA file in a timely fashion, Would the Department consider the following language? The contractor shall transmit the CMS invoices by the later of 60 calendar days after the end of the quarterly rebate period or within 7 business days of receipt of the CMS URA file?</p>	<p><u>The cited RFP reference is amended to read:</u></p> <p>The contractor shall generate and transmit the Drug Rebate Invoices by the later of 60 calendar days after the end of the quarterly rebate period or 7 business days of transmission of the quarterly CMS rebate file.</p> <p><u>The Damages associated with the cited RFP reference are amended to read:</u></p> <p>For each quarter in which 100% of the invoices are not generated and transmitted by the later of 60 calendar days after the end of the quarterly rebate period or 7 business days of transmission of the quarterly CMS rebate file, contractor will pay \$50,000 for each calendar day in which the standard is not met, up to and including the day that 100% of the quarterly invoices are generated and transmitted.</p>
223	III-170	O.2.1.4 Operational Reporting Page 170	<p>Topic/Issue:</p> <p>SLA 36: OBRA, Supplemental, and Supply Rebates</p> <p>RFP Text:</p> <p>Generate and transmit Drug Rebate Invoices no later than 60 calendar days after the end of the quarterly rebate period.</p> <p>For each quarter in which 100% of the invoices are not generated and transmitted no later than 60 calendar days after the end of each quarterly rebate period, contractor will pay</p>	

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			<p>\$50,000 for each calendar day beyond the 60 days, up to and including the day that 100% of the quarterly invoices are generated and transmitted.</p> <p>Discussion:</p> <p>The requirement is to generate drug rebate invoices within 60 days of the end of the quarter being billed. Historically, CMS sends the quarterly URA file 45 days after the quarter ends, which gives States 15 days to complete the invoicing process by the 60th day. There have been instances when this standard could not be met due to delays in receipt of required input files from CMS. Specifically, the 2009Q3 file was not received until 11/23/09 and the 2009Q4 file was not received until 5/24/10 which only gave a few days to process invoices for over 500 manufacturers.</p> <p>Supplemental invoicing:</p> <p>The State currently participates in the multi-state pool call NMPI with 11 other states. The supplemental rebate rate is calculated by aggregating the number of lives from all Participating States in the NMPI program and matching those lives with the preferred status of each drug to determine each state's supplemental URA. According to the design of the program, each state must submit eligible lives and summary PDL data before final supplemental rates can be calculated. Due of the variability and dependency of securing all data elements from the 11 other participating States, invoicing for the NMPI states occurs between day 65 and 70. Historically, New York invoices are sent by day 68.</p> <p>Question(s):</p> <p>Should CMS not be able to provide the CMS URA file in a timely fashion, Would the Department consider the following language? The contractor shall transmit the CMS invoices by</p>	<p><u>The cited RFP reference is amended to read:</u></p> <p>Generate and transmit the Drug Rebate Invoices by the later of 60 calendar days after the end of the quarterly rebate period or 7 business days of transmission of the quarterly</p>

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			<p>the later of 60 calendar days after the end of the quarterly rebate period or within 7 business days of receipt of the CMS URA file?</p> <p>Can the requirement for invoicing supplemental rebates associated with the NMPI be amended to 70 days?</p>	<p>CMS rebate file.</p> <p><u>The Damages associated with the cited RFP reference are amended to read:</u></p> <p>For each quarter in which 100% of the invoices are not generated and transmitted by the later of 60 calendar days after the end of the quarterly rebate period or 7 business days of transmission of the quarterly CMS rebate file, contractor will pay \$50,000 for each calendar day in which the standard is not met, up to and including the day that 100% of the quarterly invoices are generated and transmitted.</p> <p>No, the amended RFP language meets the needs of the Department.</p>
224	III-171	<p>O.2.1.4</p> <p>OBRA Supplemental and Supply Rebates</p> <p>Page III-171</p>	<p>Topic/Issue:</p> <p>Maintenance of Supplemental Rebate accruals and collections</p> <p>RFP Text</p> <p>Maintain and Maximize Accounts Receivable Collection rates at 45, 90, and 180 days from the date each quarterly invoice is transmitted. The minimum standard for accounts receivable collection rates are as follows:</p> <p>45 days: 90% of Invoiced Amount Collected</p> <p>90 days: 95% of Invoiced Amount Collected</p> <p>180 days 97% of Invoiced Amount Collected</p> <p>Discussion:</p>	

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			<p>The RFP includes significant penalties if rebates are not collected within stipulated time frames. However, neither the contractor nor the State of New York has the authority to force manufactures to pay rebate invoices within the stated timeframe or assess additional penalties upon manufactures for late payment. CMS requires that manufacturers calculate and pay interest for late payment, but there is no additional State or Federal financial penalty assessed upon manufacturers. We understand the purpose of the SLAs is to ensure the vendor works to a measurable standard, in this case collections of rebate dollars. However, this requirement penalizes the vendor for manufacturer actions beyond their control.</p> <p>In addition, with health care reform requiring manufacturers to pay CMS rebates for MCO utilization, it is very likely that invoice collections will be significantly delayed for the next 4 to 8 quarters. These delays will unfairly penalize the vendor who has no control or authority to demand payment from manufactures.</p> <p>Question(s):</p> <p>We request that this requirement be removed.</p>	<p><u>No, however, the cited RFP reference is amended to read:</u></p> <p>Maintain and Maximize Accounts Receivable Collection rates at 45, 90, and 180 calendar days from the date each quarterly invoice is transmitted. The minimum standards for accounts receivable collection rates are as follows:</p> <p>45 calendar days: 80% of Invoiced Amount Collected</p> <p>90 calendar days: 85% of Invoiced Amount Collected</p> <p>180 calendar days: 90% of Invoiced Amount Collected</p>
225	III-172	O.2.1.4 Operational	Topic/Issue:	

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		Reporting Page 172	<p>SLA 40: Supplemental Rebate</p> <p>RFP Text:</p> <p>Maintain and maximize the accrual and receipt of supplemental rebates through the NYS Medicaid Pharmacy Preferred Drug Program.</p> <p>The minimum standard shall be determined by calculating the percentage of Supplemental Rebate revenue received during the full 12 month period prior to the contract effective date of the total amount paid for prescription drugs for the same full 12 month period, rounded up to the second decimal point. For example, a result of 5.046% would be rounded up to 5.05%.</p> <p>The calculation of the percentage of supplemental rebate revenue to the total amount paid for Medicaid FFS prescription drugs is follows:</p> <p>(Supplemental Rebate Revenue Received per Calendar Year) divided by (Total Amount Paid for Prescription Drugs per Calendar Year)</p> <p>At DOH's sole discretion, the contractor may be deemed financially responsible for any of or the entire amount determined by DOH to have fallen below the minimum standard.</p> <p>Discussion:</p> <p>This requirement is especially difficult, since contractor has no control over the impact of health care reform legislation and future policy changes or demographic fluctuations that could impact the level of supplemental rebates. In addition, the PDP program is currently designed to maximize savings not rebate dollars.</p>	<p>It is intended to hold the contractor accountable for</p>

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			<p>Question(s):</p> <p>Is the State shifting its policy to maximize rebate dollars at the expense of lower cost generic and brand drugs with higher CMS rebates? If so, will the vendor have control over the preferred drug list in order to prefer more expensive drugs (net to the State) with larger rebates? If that is not the case, then how can the State hold the vendor to this standard?</p> <p>We request that this requirement be removed.</p>	<p>appropriate analysis and development and enactment of transition plans that ensure rebate levels will be maintained or improved. Therefore this requirement will not be removed.</p>
226	III-173	III.O.2.2	<p>TOPIC/ISSUE:</p> <p>Maintaining required staff levels</p> <p>RFP TEXT:</p> <p>The contractor must meet the minimum staffing levels stated in the Staffing and Organization Plan for each calendar month.</p> <p>The contractor must fill a vacant key staff position within thirty (30) calendar days.</p> <p>\$1,000 per day that minimum staffing levels are not met.</p> <p>One-tenth (.1%) of one percent of the fixed monthly administrative fee for each additional day beyond the initial thirty (30) calendar days the position remains vacant.</p> <p>DISCUSSION:</p> <p>Staffing levels are defined in the Staffing and Organization Plan and depict staffing per calendar month.</p> <p>Key staff roles are defined in Attachment O.</p> <p>The RFP includes two distinct staffing requirements which will</p>	

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			<p>present significant challenges to the contractor:</p> <p>1. The RFP requires a Staffing and Organization Plan by phase and by month. The contractor must meet the minimum staffing levels as stated in the Staffing and Organization Plan for each month. The Staffing Service Level Agreement (RFP Section III.O.2.2 Staffing) requires that the contractor pay a penalty of \$1,000 per day that the minimum staffing levels are not met.</p> <p>2. Key staff consists of the project’s senior leadership, technical architects, PBM management and the management staff assigned to System Operational Enhancements. The Service Level Agreement [for key staff - RFP Section III.O.2.2 Staffing] states that the contractor must fill key staff positions within thirty (30) calendar days or face a penalty of one-tenth of one percent of the fixed monthly administrative fee for each additional day beyond the initial thirty (30) calendar days the position remains vacant.</p> <p>If the requirement is to maintain minimum staffing levels within specific job titles or functional categories, the contractor would need to overstaff each of these categories, given the fact that recruitment of replacement staff normally takes a minimum of 30-60 days for staff with specific technical skills.</p> <p>QUESTION(S):</p> <p>For the first stated requirement, we request that the Department confirm that the contractor will be required to maintain the total staffing level reflected in the Staffing and Organization Plan, rather than the number of staff identified within a specific job title, functional category, or Department.</p> <p>Would the Department confirm that the second staffing requirement presented above is applicable only to Key staff positions as designated in the RFP, and not to core staff or</p>	<p>That is correct; the contractor will be required to maintain the total staffing level reflected in the Staffing and Organization Plan.</p> <p>That is also correct; the second staffing requirement presented above is applicable only to Key staff positions as designated in the RFP.</p>

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			other staff positions?	
227	III-174	O.2.3 Quality	<p>TOPIC/ISSUE:</p> <p>SLA 44: Data Quality Management</p> <p>RFP TEXT:</p> <p>The contractor must notify appropriate Department staff via the Department's formal notification process for each occurrence of a data quality defect within twenty-four (24) hours of discovery of occurrence or within-twenty-four (24) hours of notification to the contractor of the occurrence. The contractor must notify affected users within twenty-four (24) hours.</p> <p>\$100,000 per each failure to provide notification of a data quality defect as defined in the Data Quality Audit SLA.</p> <p>DISCUSSION:</p> <p>The contractor must notify the appropriate Department staff when a "data quality defect" has been discovered or the contractor is notified of a data issue by the Department or another third party, describing the nature of the defect and the columns, tables and data elements impacted and the extent of the errors. At the direction of the Department, the contractor must notify affected users in accordance procedures outlined in the Communication Plan. The penalty appears extreme in relation to the impact of the event.</p> <p>QUESTION(S):</p> <p>We request a formal definition for the term "data quality defect".</p> <p>We also request that the potential penalty be reduced to</p>	<p>A data quality defect occurs when a data element does not conform to business and data validation rules.</p> <p>The original RFP language meets the needs of the</p>

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<u>QUES #</u>	<u>RFP Page</u>	<u>RFP Reference</u>	<u>Question</u>	<u>Response</u>
			\$10,000 for each failure to provide notification.	Department.
228	III-174	O.2.3 Quality	<p>TOPIC/ISSUE:</p> <p>SLA 45: Data Quality Audit</p> <p>RFP TEXT:</p> <p>First two years of operation:</p> <p>Requirement, ninety-nine percent (98%) defect-free per quarter.</p> <p>Each successive year of operations:</p> <p>Requirement, ninety-nine percent (99%) defect-free per quarter.</p> <p>\$100,000 per each occurrence for each quarter that the R-MMIS fails to meet the data defect percentage quality audit requirement for the applicable year as defined.</p> <p>DISCUSSION:</p> <p>On a quarterly basis, the R-MMIS tables and files will be assessed by an automated process to identify any existing data quality issues to determine what percentage of data elements are defect-free. The potential penalty is difficult to understand, it is either \$400,000 per year or much more if multiple occurrences are counted in a given quarter.</p> <p>QUESTION(S):</p> <p>We request a formal definition of the term “data quality issue”.</p> <p>We request an example of how the data quality audit would be</p>	<p>A data quality issue occurs when data defects are discovered during the automated process used to determine if the data is defect free.</p> <p>Since the data quality audit process may vary based upon</p>

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			<p>conducted and how any penalty would be calculated.</p> <p>We also request that the maximum penalty for this SLA be limited to \$10,000 per quarter.</p>	<p>the offeror's proposed solution, examples of data quality audits are premature.</p> <p>The original RFP language meets the needs of the Department.</p>
229	III-175	O.2.4 Business Continuity	<p>TOPIC/ISSUE:</p> <p>SLA 47: Failover and Fallback</p> <p>RFP TEXT:</p> <p>Failover and fallback processes must be executed per section III.L of Attachment J.</p> <p>\$100,000 if the failover does not successfully occur within five (5) minutes</p> <p>DISCUSSION:</p> <p>Failover and fallback is the capability to immediately switch operations from the production environment to the failover environment in the event technical problems incapacitate the production environment It appears that this penalty would be added to other "unavailable" penalties such as the \$1000 per minute environment penalties. This appears to be an automatic \$100,000 penalty EACH AND EVERY TIME system unavailability exceeds 5 minutes. There is no cap to this significant penalty. For example, if there were to be 5 instances of 5 minute outages in a given year, the minimum penalty would seem to be \$25,000 for the production system unavailability, \$25,000 for the ITF, and provider test systems, and \$500,000 additional for this penalty (total minimum of \$550,000 for 25 total minutes)</p>	

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			<p>QUESTION(S):</p> <p>We request that the Department reconsider this penalty in light of the other penalties applied to the various environments, and significantly reduce or eliminate this penalty.</p>	The original RFP language meets the needs of the Department.
230	IV-2	B.4 Non-Collusive Bidding	<p>Subsection B.4 of RFP Section IV contains the requirements for non-collusive bidding. The instructions state: "By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies. . ."</p> <p>What mechanism provides this certification?</p> <p>Does signing the Transmittal Letter provide the certification? Please note that the contents of the Transmittal Letter do not contain a reference to non-collusive bidding (as they do with conflict of interest statements).</p> <p>Is there a separate form that bidders should complete? If yes, please note that this form was not included with the RFP and attachments.</p>	The submission of a proposal signed by an authorized representative on behalf of the bidder meets this requirement
231	IV-2 IV-16	B.2 Experience D.6.2 Letters of Reference	<p>Tab 6, Corporate Organization, Experience, and Qualifications, includes a requirement for offerors to provide "Letters of Reference from three (3) previous customers..."</p> <p>If an offeror brings extensive experience and qualifications that are relevant to this project, it may be in the State's interest to talk to more than three references to get a comprehensive perspective on the offeror's value.</p> <p>May offerors provide more than three letters of reference?</p>	No. The original RFP language meets the needs of the Department
232	IV-2	Section IV Proposal Requirements IV.B.3.2.a Page IV-2	<p>Topic/Issue:</p> <p>Requirement for reference letters</p> <p>RFP Text:</p> <p>"Every reference should be with regard to a project implemented within the past ten (10) years."</p> <p>Discussion:</p>	

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			<p>N/A</p> <p>Question(s):</p> <p>Does the term “implemented” mean that all development work on a referenced project must be finished or is it permissible to cite a contract where significant components are deployed and operational but additional work is planned?</p>	<p>Where an appropriate Federal agency has set a standard, the Department will accept that standard. Thus, in the case of an MMIS system implementation, the standard for “project implemented” is that the MMIS has been certified by CMS. Similarly, for a CSES, the standard is certified by the Office of Child Support Enforcement. For other systems, it will be based upon the presentation in the proposal to reasonably demonstrate the appropriate degree of implementation.</p>
233	IV-4 ATT Q	<p>B.6 Minority and Women Owned Business Policy Statement</p> <p>Attach Q M/WBE Procurement Forms, Form 6 M/WBE Staffing Plan</p>	<p>This question asks the Department to clarify the intent of Form 6 M/WBE Staffing Plan in Attachment Q.</p> <p>Section B.6 requires contractors to file “within ten (10) days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract.”</p> <p>The third paragraph of Section B.6 states, “After an award of this contract, the contractor agrees to submit to the Department a work force utilization report.”</p> <p>Form 6 in Attachment Q is the M/WBE staffing plan. This form is requesting the same information as is required in the two paragraphs from Section B.6 quoted above.</p> <ul style="list-style-type: none"> • Please confirm that since offerors may not have all the information required in Form 6 by proposal submission, does the Department intend for Form 6 to be submitted following contract award or with the proposal? • Is Form 6 to be completed by the offeror and present a total view of the staffing plan for the contract, or is Form 6 to be completed individually by each M/WBE to identify the staffing mix of personnel each company is supplying to the R-MMIS contract? 	<p>The M/WBE Staffing Plan (Form 6) must be completed and submitted following the contract award and prior to contract execution.</p> <p>The M/WBE Staffing Plan (Form 6) must be completed by the offeror and any sub-contractors used to comply with the contract.</p>

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234	IV-5	B.7 Certification Regarding Debarment and Suspension	<p>Subsection B.7.3 of RFP Section IV contains the regulations about debarment and suspension. The instructions state: "The prospective lower tier participant certifies, by submission of this proposal. . ."</p> <p>What mechanism provides this certification?</p> <p>Does signing the Transmittal Letter provide the certification? Please note that the contents of the Transmittal Letter do not contain a reference to debarment and suspension (as they do with conflict of interest statements).</p> <p>Is there a separate form that bidders should complete? If yes, please note that this form was not included with the RFP and attachments.</p>	The submission of a proposal signed by an authorized representative on behalf of the bidder meets this requirement.
235	IV-6 IV-10	B.8 Conflict of Interest D.2 Transmittal Letter and Appendix R – Transmittal Letter Template	<p>RFP Text</p> <p>As part of its bid submission, the offeror (and /or any subcontractor(s) must comply with the following:..</p> <p>A statement which complies with the four conflict of interest requirements set forth in RFP Section IV.B.8., Conflict of Interest. Where any potential or actual conflict is disclosed, a description should also be included as to how a potential or actual conflict and/or disclosure of confidential information relating to the contract will be avoided. If there is no conflict of interest a statement so indicating should be included;</p> <p>Question</p> <p>In responding to the conflict of interest requirements per item 11 on page IV-10, should the Bidder respond on its behalf as well as on behalf of any proposed subcontractors? Or, should a subcontractor address the conflict of interest requirements as part of its separate subcontractor summary identified in item 12 on page IV-10?</p>	As stated in the Transmittal Letter Template, Attachment R, Section 10, any and all subcontractors must provide a statement, to be included in the offeror's proposal, which complies with the four conflict of interest requirements set forth in RFP Section IV.B.8.
236	IV-8	C. Proposal Submission	RFP Text	

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		Instructions	<p>All proposal materials should be printed on 8.5" x 11" white paper (two-sided), be clearly page numbered on the bottom of each page with appropriate header and footer information.</p> <p>Question</p> <p>Please clarify what is meant by "appropriate header and footer information." Are there specific requirements for the header and footer?</p>	<p>The proposal should be designed in such a way that the information in the header and footer assist in ease of review of the proposals.</p>
237	IV-8	C. Proposal Submission Instructions	<p>RFP Text</p> <p>A type size of eleven (11) points or larger should be used.</p> <p>Question</p> <p>We understand the proposal narrative 11 point minimum font size. May Offerors use a smaller font for graphics, organizational charts, staffing plans, Gantt charts, and tables— as long as the size of the font is clearly legible and easy to see? An 11 point font can prevent graphics and charts from fitting on a single page.</p>	<p>For presentation materials, as long as they are legible, a smaller font, but no smaller than 8 point, may be used.</p>

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<u>QUES #</u>	<u>RFP Page</u>	<u>RFP Reference</u>	<u>Question</u>	<u>Response</u>
238	IV-8	C. Proposal Submission Instructions	<p>RFP Text</p> <p>The sealed Price Proposal, audited Company Financial Statements and Comprehensive Dunn & Bradstreet Reports should also be presented in separate D-ring binder(s);</p> <p>Question</p> <p>Section E.5 Company Financial Contents on page IV-18 states that the "Company Financial Information should be submitted in a separate sealed envelope enclosed within Tab 5..." Page IV-8 states that the Financial Statements and Comprehensive Dunn & Bradstreet Reports should be in separate D-ring binders.</p> <p>Please confirm that Tab 5 of the Price Proposal should be in a separate D-ring binder and that this binder should not be packaged in the same box as the rest of the Price Proposal. Additionally, does the Department want the Dunn and Bradstreet report in a separate binder from the Financial Statements binder or may the Dunn & Bradstreet Report be included in the same binder as the Financial Statements?</p>	<p>The Company Financial Statements, Dunn & Bradstreet Report, and Certificate of Incorporation, etc. should be submitted together in a separately sealed envelop in Tab 5 of the Financial Proposal. A D-ring binder is not required.</p>
239	IV-8	C. Proposal Submission Instructions	<p>RFP Text</p> <p>4.All files on the DVDs should be individually identified by Component Name, Offeror, proposal part, and version.</p> <p>Question</p> <p>Please clarify the following:</p> <p>a) What is meant by Component Name? Is this different from proposal part? If so, what does proposal part mean in this context?</p> <p>b) What does "version" mean in this context?</p>	<p>a) Component name relates to either the Technical or Financial Proposals. Within the Technical Proposal, whether it is the narrative component or the Project Plan component. With the Financial Proposal, whether it is the narrative or the worksheets.</p> <p>b) Version means the program the file was created</p>

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			c) For every file listed on the DVD, does the Department also want the name of the bidder included as part of the file name?	under. c) Yes
240	IV-8	C. Proposal Submission Instructions	<p>Topic/Issue:</p> <p>DVD Copies</p> <p>RFP Text:</p> <p>Proposal Submission Instructions requires Digital Video Discs (DVD) copies of the Technical and Price Proposals be submitted with the hard copies of the proposal.</p> <p>Discussion:</p> <p>N/A</p> <p>Question:</p> <p>Please confirm that Compact Discs (CDs) are required to be submitted and not DVDs.</p>	Either may be submitted.
241	IV-8	C. 3 Proposal Submission Instructions	<p>Topic/Issue:</p> <p>Font size for graphics</p> <p>RFP Text:</p> <p>All proposal materials should be printed on 8.5" x 11" white paper (two-sided), be clearly paged numbered on the bottom of each page with appropriate header and footer information. A type size of eleven (11) points or larger should be used.</p> <p>Discussion:</p>	

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<u>QUES #</u>	<u>RFP Page</u>	<u>RFP Reference</u>	<u>Question</u>	<u>Response</u>
			<p>N/A</p> <p>Question:</p> <p>Will the State allow a minimum of 8 point type in graphics?</p>	<p>For presentation materials, as long as they are legible, a smaller font, but no smaller than 8 point, may be used.</p>
242	IV-8	<p>Section IV. Proposal Requirements</p> <p>C. Proposal Submission Instructions</p> <p>Page IV-8</p>	<p>Topic/Issue:</p> <p>Use of 11 X 17 Foldouts</p> <p>RFP Text:</p> <p>“Proposal materials should be printed on 8.5” X 11” white paper (double-sided)”</p> <p>Discussion:</p> <p>Presentation of overarching methodologies and approaches may become laborious for the evaluator to interpret without sufficiently detailed roadmaps/process diagrams. Used judiciously, 11” X 17” fold out pages can provide excellent summarization in the Executive summary and strengthen overviews of Section topics.</p> <p>While excessive use can create a burden in manipulation, our experience is that a restriction of not more than 10% of page count can be used to limit foldouts (using a foldout as 2 pages) and still provide a convenient avenue for bidder and evaluator to share information.</p> <p>Question:</p> <p>Will the Department modify proposal instruction to allow judicious use of Foldouts to substantiate summary material?</p>	<p>No. The original RFP language meets the needs of the Department.</p>

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243	IV-9	Section IV Proposal Requirements D.1 Page IV-9	<p>Topic/Issue: D.1 TABLE OF CONTENTS (TAB 1)</p> <p>RFP Text: A Table of Contents of the Technical Proposal should be inserted in Tab 1. The Table of Contents should identify all sections (identified here as Tabs), all subsections contained therein, and the corresponding page numbers. The Table of Contents should include all sections and subsections present under Tabs 1 through 7. The Table of Contents found at the beginning of this RFP provides a representative example of what is expected for the Technical Proposal Table of Contents.</p> <p>Discussion: N/A</p> <p>Question: We assume that the reference to Tab 7 is an error and not required, and since Amendment 1 deleted Tab 5 Contractor and Systems Requirements, there should actually be 5 tabs in the Technical Proposal.</p> <p>Please confirm that the following tabs are required for the Technical Proposal:</p> <p>Tab 1 – Table of Contents Tab 2 – Transmittal letter Tab 3 – Executive Summary and Introduction Tab 4 – Scope of Work</p>	<p>Yes, per Amendment 1 :</p> <ol style="list-style-type: none"> 1. the reference to Tab 7 is an error and not required; 2. Tab 5 Contractor and Systems Requirements is not required; and, 3. there should be 5 tabs in the Technical Proposal, as follows: <p>Tab 1 – Table of Contents Tab 2 – Transmittal letter Tab 3 – Executive Summary and Introduction</p>

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			Tab 5 – Corporate Organization, Experience, and Qualifications	Tab 4 – Scope of Work Tab 6 – Corporate Organization, Experience, and Qualifications
244	IV-11	D.2 Transmittal Letter, Item 12.e	RFP Text The subcontractor's assertion that it does not discriminate in its employment practices with regards to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin or handicap. Question We understand that the subcontractors must include this assertion in their subcontractor summary documents. Should Bidders also include this assertion in their Transmittal Letters?	No. An offeror should utilize Attachment R – Transmittal Letter template for its Transmittal Letter.
245	IV-12, IV-15-16	Tab 5 D.5 Contractor And Systems Requirements and D.4 Scope of Work	We are unclear about both the level of detail required and the proposal organization for Tab 5 (RFP Reference: D.5, Contractor and Systems Requirements, page IV-15-16), especially in view of the proposal instructions for Tab 4 (RFP Reference: D.4 Scope of Work, page IV-12). Therefore, we seek clarification regarding the content and organization for both Tabs 4 and 5, as noted below. It appears that Tab 4 is asking for an item by item response to all Proposal Requirements within RFP Section III, R-MMIS Scope of Work and Attachment P, Proposal Requirements. It is clear that the requirements in Attachment P are identical to the requirements contained under the various headings within RFP Section III that are labeled as "xxx...Proposal Requirements." The only difference in Attachment P is that the matrix includes a unique numbering system, as noted in the column called Requirement ID.	Tab 5 was deleted. Please see Amendment #1 on the Department's website.

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246	IV-12, IV-15-16	Tab 5 D.5 Contractor And Systems Requirements and D.4 Scope of Work	<p>Please confirm that Tab 4 should address only the actual proposal requirements under the applicable headings marked Proposal Requirements and that Tab 4 does not need to address the various headings that precede the Proposal Requirements headings. In essence, please confirm that Tab 4 should address only the requirements contained in Attachment P and that Tab 4 should be organized accordingly to cross reference back to Attachment P.</p> <p>Tab 5 instructions state that "...In this section, offerors will document their approach to meeting the contractor requirements described in section III R-MMIS Statement of Work of this RFP and provided in Attachment J Bidder Requirements Traceability Matrix. The Department requires offerors to use where possible a one-to-one match between the numbering utilized for sections in the RFP and the numbering of their corresponding responses in Tab 5."</p> <p>It appears that Tab 5 is asking offerors to respond again to all of the contractor requirements in Section III (based on our assumption that contractor requirements include Proposal Requirements).</p> <p>This section also appears to require offerors to respond to Attachment J, Bidder Requirements Traceability Matrix. Attachment J contains many of the same requirements that are included in Attachment P, Proposal Requirements (worded slightly differently, in some cases).</p> <p>Example:</p> <p>B.2.1 Proposal Requirements, #9 on page III-4 states: "Describe in detail the approach the offeror will undertake to ensure that the R-MMIS will be synchronized with the eMedNY system during the Implementation Phase. Similarly, Attachment J, Requirement ID# PP-15, states "5. Be responsible for ensuring that the R-MMIS stays in synchronization with the</p>	<p>Tab 5 was deleted. Please see Amendment #1 on the Department's website.</p>

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			<p>eMedNY system during the Planning and Implementation Phases.”</p> <p>Additionally, Attachment J appears to contain requirements that tie back to some of the language included in the headings which precede the Proposal Requirements headings contained in RFP Section III- R-MMIS Scope of Work.</p> <p>Example:</p> <p>B.1.Overview on page III-2 states: “The contractor’s project management approach must promote the development of a strong working relationship and facilitate open and timely communication with the Department, other contractors and stakeholders that will support achievement of the overall goal of satisfactory performance within budget.” Similarly, Attachment J, Requirement ID# PP-1, states “1. Facilitate open and timely communication with the Department, other contractors and stakeholders, as well as a strong working relationship to achieve the overall goal of satisfactory performance within budget.”</p>	
247	IV-12, IV-15-16	Tab 5 D.5 Contractor And Systems Requirements and D.4 Scope of Work	If Tab 5 includes a response to each of the numbered requirements included in Attachment J, Bidder Requirements Traceability Matrix as well as all of the headings in Section III – R-MMIS Scope of Work, most of these responses would be identical to the responses asked for in Tab 4. In short, we do not understand the difference between the responses asked for in Tab 4 versus Tab 5. Please explain precisely what is required for both Tab 4 and Tab 5 as we do not believe the State would want that level of duplication in the proposal currently required.	Tab 5 was deleted. Please see Amendment #1 on the Department’s website.
248	IV-15	D.4.9 Functional	<p>RFP Text</p> <p>D.4.9.4 Program Management</p> <p>D.4.9.6 R-MMIS ICD-10 Implementation</p> <p>Question</p>	D.4.9.6 R-MMIS ICD-10 Implementation section is a

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			<p>This section states that within the Functional section there should be a separate subsection called R-MMIS ICD-10 Implementation. However, the requirements for ICD-10 Implementation (pages III-139 thru III-14)) are included in the Program Management part of Section III of the RFP and the Program Management section of Attachment P.</p> <p>Please confirm that Bidders should address the ICD-10 Proposal Requirements contained on Page III-140 and Attachment P within its own section and that Bidders are not required to address these requirements again in the subsection called Program Management.</p>	typographical error. Requirements for the R-MMIS ICD-10 Implementation should be addressed within the Program Management Subsection.
249	IV-15	D.4.10 Facility	<p>RFP Text</p> <p>.. In addition all proposal requirements outlined in Section III.K of the RFP and proposal requirements in Tab L of Attachment P must be addressed.</p> <p>Question</p> <p>Please confirm that the reference to Tab L of Attachment P is a typographical error and should say Tab K of Attachment P.</p>	Yes, the reference to Tab L of Attachment P is a typographical error and should say Tab K of Attachment P.
250	IV-15	D.4.11 Business Continuity and Disaster Recovery	<p>RFP Text</p> <p>In addition all proposal requirements outlined in Section III.L of the RFP and proposal requirements in Tab I of Attachment P must be addressed.</p> <p>Question</p> <p>Please confirm that the reference to Tab I of Attachment P is a typographical error and should say Tab L of Attachment P.</p>	Yes, the reference to Tab I of Attachment P is a typographical error and should say Tab L of Attachment P.
251	IV-15	Section IV. Proposal Requirements	<p>Topic/Issue:</p> <p>Attachment J. Response</p>	

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		D.5 Proposal Submission Instructions Page IV-15	<p>RFP Text: “describe their approach to meeting the contractor requirements . . . and provided in Attachment J.”</p> <p>Discussion: Instructions in Attachment J suggest that the only mandatory treatment of the over 2000 requirements listed is completion of the column showing agreement. In other references (architecture, functional description) Attachment J requirements (some not all) are specifically noted.</p> <p>Question: Is it the Departments intent to have bidders explicitly define their approach to meet every Attachment J requirement, and list location in a traceability matrix, or merely acknowledge acceptance in Tab 5?</p>	Tab 5 was deleted. Please see Amendment #1 on the Department’s website.
252	IV-15	D.5 Contractor and Systems Requirements (Tab 5)	<p>In every section of the proposal, bidders will want to provide responses that directly and clearly respond to the RFP’s requirements and the State’s expectations. In addition, clear responses are an RFP requirement: “The proposal should be as specific as possible in its responses to provide the Department with an adequate understanding of the intent of the proposal.”</p> <p>Section IV, Proposal Requirements, provides explicit instructions for writing each section of the proposal. The instructions for Tab 4, Scope of Work, set a model for the kind of detailed, explicit instructions that bidders need in developing their proposals.</p> <p>However, we are not clear with the instructions for Tab 5, Contractor and Systems Requirements. The Tab 5 instructions instruct bidders to “document their approach to meeting the contractor requirements described in Section III R-MMIS Statement of Work of this RFP and provided in Attachment J Bidders Requirements Traceability Matrix”.</p>	Tab 5 was deleted. Please see Amendment #1 on the Department’s website.

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			<p>We believe that all vendors, and the Department’s proposal evaluators, would benefit if the Department could provide explicit instructions:</p> <ul style="list-style-type: none"> • For the contents and structure of Tab 5 (as explicit as the instructions for Tab 4 containing subsections D.4.1 through D.4.14), and • To clarify the use of Attachment J in the response to Tab 5, and <p>To clarify the relationship or mapping to the Tab 4 response, if any.</p>	
253	IV-16	D.6 Amendment 1	<p>RFP TEXT</p> <p>D.6 CORPORATE ORGANIZATION, EXPERIENCE, AND QUALIFICATIONS (TAB 6)</p> <p>Tab 6 should be labeled Corporate Organization, Experience, and Qualifications.</p> <p>Question</p> <p>Based on the deletion of Tab 5 per Amendment #1, should Tab 6 Corporate Organization, Experience, and Qualifications now be labeled as Tab 5?</p>	No. The offeror should utilize the labeling as found in the RFP. See answer 243.
254	IV-17; V-14; ATT M	Page IV-17 Page V-14 IV-17; E.2 V-14; I.3.1.7 Attachment M Pricing Schedules	<p>TOPIC/ISSUE:</p> <p>Daily Rate</p> <p>RFP TEXT:</p> <p>“The daily staffing rate is a fully loaded rate and includes all personnel, overhead, indirect, travel, profit, equipment usage and any other miscellaneous costs. These rates will be used in the event the Department determines the need to add additional staff as set forth under Attachment M.</p> <p>“The daily rates (for Fixed Administrative Fee staff) and hourly</p>	

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			<p>rates (for System Change Staff) provided in Attachment M Pricing Schedules that are appropriate to the staff roles being requested and the contract year will be used for pricing the additional staffing component of the contract amendment.”</p> <p>DISCUSSION:</p> <p>Daily rates are referenced in two separate sections of the RFP but do not appear to be referenced in Attachment M.</p> <p>QUESTION(S):</p> <p>Should offerors propose a Daily Rate? If so, where should offerors include this rate? Will the Department provide a revised Attachment M? If a Daily Rate should not be proposed by the offeror, how does the Department intend to calculate the Daily Rate?</p>	Please see Amendment #2.
255	IV-18	Section IV. E.4	<p>Attachment S Vendor Responsibility Attestation</p> <p>Attachment L page 8, states the following: “See detailed proposal requirement descriptions in section III.J and Attachment S.” Should this read “Attachment P Proposal Requirements,” instead of Attachment S?</p>	Yes. This should read “Attachment P Proposal Requirements,” instead of Attachment S.
256	V-11	New York State Administrative Requirements, I.3 Operations Phase Payments, 1.	Please confirm that the desired start date for the Phase 1 Implementation is March 1, 2011 and the completion date is February 28, 2014 (a 36 month DDI).	This is confirmed.
257	V-12	NYS Administrative Requirements	This section says: “In the event the total volume of claims received exceeds the projections set forth in section V.I.3.3.1 for a contract year but do not exceed the upper threshold set forth	

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		Operation Phase Payments, V.I.3.3.2	below, the Department will pay the contractor the percentage increase identified on Pricing Schedule D.” Should this say “identified on Pricing Schedule E” and not Schedule D?	That is correct. The reference should be to “Pricing Schedule E.”
258	V-13	V.I.3.1.2	<p>TOPIC/ISSUE:</p> <p>Monthly cap on billable systems change billings</p> <p>RFP TEXT:</p> <p>2. The contractor shall support projects to change the system in each year of the contract through the annual provision of up to 200,000 hours of work performed by System Change Staff and also detailed in Attachment M Pricing Schedules. The annual System Change Staff pricing and budgets must be developed in these schedules using this 200,000 annual allotment of hours.</p> <p>DISCUSSION:</p> <p>The current eMedNY contract includes a monthly cap on billable hours for each core Evolution staff member which limits billings to eight hours for each work day during the month</p> <p>QUESTION(S):</p> <p>Will the contractor be able to bill for every productive hour up to the 200,000 allotment for approved system changes, or will the monthly cap described above apply?</p>	<p>The current contract terms are not relevant to the R-MMIS. As set forth in Section V.I.3.1, the “The contractor shall be paid up to, but not in excess of, the Supplemental Staff price, as presented in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor’s proposal.” The contractor will be paid for the time spent directly on Department approved projects as set forth in Section V.I.3.1.3. There is no monthly cap.</p>
259	V-13	V.I.3.1.5	TOPIC/ISSUE:	

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			<p>Billing of Systems Change staff</p> <p>RFP TEXT:</p> <p>5. Time spent on Department system change projects by staff categorized as System Change Staff must also be included in each project's estimated and expended hours. Time spent by these staff resources working on a system change project will be paid upon Department-approved completion of that project based on the lesser of either the appropriate hourly rates from Attachment M Pricing Schedules or the actual cost to the contractor (see section V.I.3.1.8, below).</p> <p>8. Upon the successful completion of a project, or at another time as determined by the Department in its sole discretion, the Department will pay the contractor for the effort expended by the System Change Staff. Payment will be based upon the lesser of the either the rates proposed in Attachment M Pricing Schedules, Schedule F Supplemental Staff or the actual cost for each title used, including corporate allocation and markup, to the contractor. The contractor must certify that the rates used in the calculation of its billing reflect its actual cost. Corporate allocation and markup shall be applied in the same manner and at the same rates as in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor's proposal. The contractor shall receive no payment for System Change Staff in excess of the individual rates proposed in response to this RFP. In calculating the payment, corporate allocation and markup will not be applied to resources obtained through another corporate division. Upon any request, the contractor shall furnish to the Department all documentation, in a level of detail satisfactory to the Department, fully justifying the contractor's explanation of it calculation of its actual costs.</p> <p>DISCUSSION:</p> <p>We are concerned that the requirement to bill at the lower of bid</p>	<p>The Section V.I.3.1.8 of the RFP is amended to read:</p> <p>8. Upon the successful completion of a project, or at another time as determined by the Department in its sole discretion, the Department will pay the contractor for the effort expended by the System Change Staff. Payment will be based upon the lesser of the either the rates proposed in Attachment M Pricing Schedules, Schedule F Supplemental Staff or the actual cost for each title used, including corporate allocation and markup, to the contractor. The contractor must certify that the rates used in the calculation of its billing reflect its actual cost. Corporate allocation and markup shall be applied in the same manner and at the same rates as in Attachment M Pricing Schedules, Schedule F Supplemental Staff <u>Schedule D Operations Price – Annual Administrative Fee</u> of the contractor's proposal. The contractor shall receive no payment for System Change Staff in excess of the individual rates proposed in response to this RFP. In calculating the payment, corporate allocation and markup will not be applied to resources obtained through another corporate division. Upon any request, the contractor shall furnish to the Department all documentation, in a level of detail satisfactory to the Department, fully justifying the contractor's explanation of it calculation of its actual costs.</p>

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			<p>rates or actual cost is inconsistent with the concept of a fixed price labor hour rates, and increases the contractors risk level for this project. It should be noted that there are occasions when the actual cost of systems development staff exceeds the contracted rate, particularly in times of peak demand for these resources, or in cases where staff have highly specialized skills. If a fixed-price-per-hour is consistently followed, the contractor may recover these cost overrides using the excess of rate over cost in other categories as an offset. The methodology stipulated above would negate the possibility for such offsets, eliminating the possibility for the contractor to average transactions where staff costs exceed the bid price with transactions where the bid price exceeds the related costs revenue that is sufficient in all cases to cover its costs.</p> <p>QUESTION(S):</p> <p>We request that the Department modify this requirement and compensate the contractor on a monthly basis for all development hours incurred during the month, at the contracted rates.</p> <p>As an alternative, would the Department consider a methodology that limits contractor profit on Systems Change staff to the overall profit rate proposed for Schedule F System Change Staff? Specifically, what we are proposing is a monthly analysis of profit and loss for all system change staff who contribute to the annual 200,000 allotment described in the RFP, based on contract-year cumulative revenue and costs through the month of the analysis. The analysis would calculate a consolidated profit and loss by accumulating the total revenue and total cost for all system change staff assigned to the R-MMIS project. If the cumulative profit and loss through the measurement date is equal to or less than the contracted profit rate, no adjustment would be required. To the extent that the cumulative rate exceeds the contracted profit rate, an adjustment would be made to reduce current month's billing by</p>	<p>No, the original RFP language meets the needs of the Department.</p> <p>No, the original RFP language meets the needs of the Department.</p>

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			amount that would reduce the cumulative contract year profit rate to the contract-standard profit rate.	
260	V-13-14	V.I.3.1. Supplemental Staff; # 5 & # 8	<p>TOPIC/ISSUE: Billing of Systems Change staff</p> <p>RFP TEXT:</p> <p>5. Time spent on Department system change projects by staff categorized as System Change Staff must also be included in each project's estimated and expended hours. Time spent by these staff resources working on a system change project will be paid upon Department-approved completion of that project based on the lesser of either the appropriate hourly rates from Attachment M Pricing Schedules or the actual cost to the contractor (see section V.I.3.1.8, below).</p> <p>8. Upon the successful completion of a project, or at another time as determined by the Department in its sole discretion, the Department will pay the contractor for the effort expended by the System Change Staff. Payment will be based upon the lesser of the either the rates proposed in Attachment M Pricing Schedules, Schedule F Supplemental Staff or the</p>	

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			<p>actual cost for each title used, including corporate allocation and markup, to the contractor. The contractor must certify that the rates used in the calculation of its billing reflect its actual cost. Corporate allocation and markup shall be applied in the same manner and at the same rates as in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor's proposal. The contractor shall receive no payment for System Change Staff in excess of the individual rates proposed in response to this RFP. In calculating the payment, corporate allocation and markup will not be applied to resources obtained through another corporate division. Upon any request, the contractor shall furnish to the Department all documentation, in a level of detail satisfactory to the Department, fully justifying the contractor's explanation of its calculation of its actual costs.</p> <p>DISCUSSION:</p> <p>The provision that defers contractor payment until successful completion of systems change projects can have a significant impact on the contractor's cash flow. The current contractor has developed a number of projects with tens of thousands of staff hours of effort, spanning time periods of 6 -12 months or more. This contract provision will impose significant time-value-of-money costs on the contractor during the period it must incur development staff costs.</p> <p>QUESTION(S):</p> <p>We request that the Department modify this requirement and compensate the contractor on a monthly basis for all development hours incurred during the month, at the contracted rates, as is the current practice. As an alternative, we would request that billings be accepted and paid at milestone points as the systems change projects proceed.</p>	<p>See revised Section V.I.3.1.8 under question 259.</p> <p>No, the original RFP language meets the needs of the Department.</p>
261	V-13-14	V.I.3.1. Supplemental	TOPIC/ISSUE:	

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		Staff (Entire Section) Page(s) V-13-14	<p>Supplemental Staff versus Systems Change Staff</p> <p>RFP TEXT:</p> <p>The contractor shall be paid up to, but not in excess of, the Supplemental Staff price, as presented in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor's proposal. These monthly payments made by the Department will be variable and based on the actual hours spent by contractor system and operational enhancement staff working on completing Department-approved projects at the hourly rates in Pricing Schedule F appropriate to the staff and contract year.</p> <p>1. The contractor shall maintain, as key staff, the Administrative, Technical, and PBM key staff defined in section III.M Organization and Staffing Requirements of this RFP and the staff required for the EPMO defined in Section III.M Organization and Staffing Requirements of this RFP. These personnel are funded by the fixed administrative fee.</p> <p>2. The contractor shall support projects to change the system in each year of the contract through the annual provision of up to 200,000 hours of work performed by System Change Staff and also detailed in Attachment M Pricing Schedules. The annual System Change Staff pricing and budgets must be developed in these schedules using this 200,000 annual allotment of hours.</p> <p>3. The allotment of 200,000 annual hours is to be used only for time the System Change Staff spend directly on Department approved projects. All other System Change Staff time (e.g., vacation, sick leave, training, etc.) shall not be applied against this allotment of hours.</p> <p>4. Tracking and reporting of hours spent on individual system change projects by staff paid through the fixed administrative fees is mandatory. These hours are to be considered in each system change project's estimated and expended hours.</p>	

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			<p>However, these hours have no impact on monthly System Change Staff-priced payments based on Attachment M Pricing Schedules, Schedule F Supplemental Staff or meeting the 200,000 hours. The annual fixed administrative fee pricing and budgets must be developed in these schedules with this in mind.</p> <p>5. Time spent on Department system change projects by staff categorized as System Change Staff must also be included in each project's estimated and expended hours. Time spent by these staff resources working on a system change project will be paid upon Department-approved completion of that project based on the lesser of either the appropriate hourly rates from Attachment M Pricing Schedules or the actual cost to the contractor (see section V.1.3.1.8, below).</p> <p>6. Some activities performed by contractor staff will be considered system maintenance (e.g., update version control management) and as such those activities are to be considered and budgeted as part of the annual fixed administrative fee regardless of whether the staff performing the task is budgeted under the fixed administration fee or the System Change Staff pricing.</p> <p>7. If during the operations of the R-MMIS the Department determines that the system change workload and associated project deadlines necessitate additional contractor staff resources, the Department and the contractor may develop a contract amendment to acquire the additional staff. The daily rates (for Fixed Administrative Fee staff) and hourly rates (for System Change Staff) provided in Attachment M Pricing Schedules that are appropriate to the staff roles being requested and the contract year will be used for pricing the additional staffing component of the contract amendment.</p> <p>8. Upon the successful completion of a project, or at another time as determined by the Department in its sole discretion, the</p>	

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			<p>Department will pay the contractor for the effort expended by the System Change Staff. Payment will be based upon the lesser of the either the rates proposed in Attachment M Pricing Schedules, Schedule F Supplemental Staff or the actual cost for each title used, including corporate allocation and markup, to the contractor. The contractor must certify that the rates used in the calculation of its billing reflect its actual cost. Corporate allocation and markup shall be applied in the same manner and at the same rates as in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor’s proposal. The contractor shall receive no payment for System Change Staff in excess of the individual rates proposed in response to this RFP. In calculating the payment, corporate allocation and markup will not be applied to resources obtained through another corporate division. Upon any request, the contractor shall furnish to the Department all documentation, in a level of detail satisfactory to the Department, fully justifying the contractor’s explanation of it calculation of its actual costs.</p> <p>9. The total amount paid to the contractor for System Change Staff shall not exceed the total contract value, as may be amended. Any amounts not paid in any contract year will be available in subsequent years.</p> <p>DISCUSSION:</p> <p>The RFP makes reference to Supplemental Staff, as well as Systems Change Staff, but does not specifically differentiate between these two categories in terms of functional roles and contractor billing procedures</p> <p>QUESTION(S):</p> <p>Are these terms synonymous? If not, what is the difference between these staff categories in functional responsibilities and contractor reimbursement procedures?</p>	<p>Yes, these terms are synonymous.</p>

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262	V-14	V.I.3.1.8	<p>“Upon the successful completion of a project, or at another time as determined by the Department in its sole discretion, the Department will pay the contractor for the effort expended by the System Change Staff. Payment will be based upon the lesser of the either the rates proposed in Attachment M Pricing Schedules, Schedule F Supplemental Staff or the actual cost for each title used, including corporate allocation and markup, to the contractor. The contractor must certify that the rates used in the calculation of its billing reflect its actual cost. Corporate allocation and markup shall be applied in the same manner and at the same rates as in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor’s proposal. The contractor shall receive no payment for System Change Staff in excess of the individual rates proposed in response to this RFP. In calculating the payment, corporate allocation and markup will not be applied to resources obtained through another corporate division. Upon any request, the contractor shall furnish to the Department all documentation, in a level of detail satisfactory to the Department, fully justifying the contractor’s explanation of it calculation of its actual costs.”</p> <p>1) Please explain the requirement that “corporate allocation and markup will not be applied to resources obtained through another corporate division.” Since some companies handle these items differently, can the sentence be extended to add “to the extent that rates for such resources already includes corporate allocation and markup”?”</p> <p>2) The usage and certification of actual rates for each completed project creates a large administrative burden to the contractor (and potentially to the Department to verify the rates). Since these rates are competitively bid, would the State consider the removing the use of actual costs as part of the billing process for Supplemental Staff work? As part of such a change we recommend that the Department assert a new requirement that each Supplemental Staff be approved by the</p>	<p>The Department requires that corporate allocation and/or markup be applied only once by a company. However, if the contractor demonstrates, to the satisfaction of the Department, and certifies that no other corporate allocation and/or markup have been applied, then corporate allocation and/or markup may be applied to resources obtained through another internal corporate entity.</p> <p>The Department will not remove the use of actual costs as part of the billing process. Supplemental staff is approved by the Department in advance. As stated in Section III.M.2, “Upon receipt of an order to supply the staff the contractor must supply the staff as quickly as possible based upon the qualifications / experience defined in Attachment O.” The determination of which projects are being worked on and their priority shall be the responsibility of the Department. If</p>

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			<p>department before being authorized to perform enhancement work.</p> <p>If such a change is not possible, we recommend that the approach be modified as follows:</p> <p>The contractor will invoice for completed projects using the fixed hourly rate bid for each labor category. The actual cost will be monitored and analyzed every six months. If the actual costs calculated is less than the bid rates an invoice adjustment would be made to account for any difference.</p>	<p>the offeror has an adequate auditable accounting system in place that appropriately tracks time and rates (as required by the system change request process), once a project is set up, the Department does not believe this requirement presents a burden. Approval of supplemental staff is merely a qualitative process to assess the capability of the staff and has nothing to do with tracking of hours or payment rate.</p> <p>The Department will not modify its approach; the original RFP language meets the needs of the Department.</p>
263	V-14	<p>I.3.1.8</p> <p>Attachment M Pricing Schedules, Schedule F Supplemental Staff Price</p>	<p>TOPIC/ISSUE:</p> <p>Reimbursement for Supplemental Staff</p> <p>RFP TEXT:</p> <p>“Payment will be based upon the lesser of the either the rates proposed in Attachment M Pricing Schedules, Schedule F Supplemental Staff or the actual cost for each title used, including corporate allocation and markup, to the contractor...Corporate allocation and markup shall be applied in the same manner and at the same rate as in Attachment M Pricing Schedules, Schedule F Supplemental Staff of the contractor's proposal.”</p> <p>DISCUSSION:</p> <p>Schedule F requires a fixed hourly rate for each labor category for each year. There do not appear to be any requirements or space in Schedule F to reflect Corporate allocations and markup.</p>	

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			<p>QUESTION(S):</p> <p>Does the Department require offerors to provide Corporate allocation and markup rate in Schedule F?</p> <p>Will the Department by updating Schedule F to accommodate such a request?</p>	<p>No.</p> <p>No.</p> <p>See revised Section V.I.3.1.8 under question 259.</p>
264	V-14	I.3.1.8	<p>TOPIC/ISSUE:</p> <p>Reimbursement for Supplemental Staff</p> <p>RFP TEXT:</p> <p>“In calculating the payment, corporate allocation and markup will not be applied to resources obtained through another corporate division”.</p> <p>DISCUSSION:</p> <p>QUESTION(S):</p> <p>Is it the Department’s intention to ensure that any corporate allocation or markup is only applied once by a corporation for individuals assigned to Supplemental Staff positions?</p>	<p>Yes.</p>
265	V-15	V.I.4 Contract Extension Pricing	<p>TOPIC/ISSUE:</p> <p>The contractor may be losing money based on the CY8 pricing.</p>	

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			<p>RFP TEXT:</p> <p>I.4 CONTRACT EXTENSION PRICING</p> <p>Should the Department elect to extend the term of the contract, as set forth in this RFP, the pricing for each optional contract extension year will be subject to an annual price increase of the lesser of three percent (3%) or the percent increase in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 2012 for the twelve (12) month period ending three (3) calendar months prior to the end date of the last year of the contract, as may be amended</p> <p>DISCUSSION:</p> <p>We are concerned that the process for pricing contract extension years will leave the contractor exposed to a loss position resulting from costs that are in excess of the contract revenues that emerge from the escalation process described above. Specifically, we are concerned that excessive inflation or other unanticipated cost increases during the final years of the base contract will result in losses by the contractor. Should these unanticipated cost increases be sufficiently large, that total costs exceed the revenue that is developed according to the RFP provision stated above, the contractor would incur additional losses during the extension years. In addition, the CY8 price represents an average of all of the operations years and not the actual escalated price attributable to CY8. This is because there is a single Schedule D for all four (4) operations years. Therefore, there is no recognition of inflation and other escalation factors in calculating the CY8 price, upon which the optional extension year prices are based. This is a significant risk factor in contractor pricing.</p> <p>QUESTION(S):</p>	

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			We request that the contract provision be replaced with a clause calling for good faith negotiations to arrive at a price for extension years. If the Department wishes to retain a cap on extension year pricing, we request that the increment to be added to the final base year pricing be an amount that is sufficient to yield a profit percentage in the extension period that approximates the margin bid in Schedule D.	The original RFP language meets the needs of the Department.
266	V-15	Turnover	<p>TOPIC/ISSUE:</p> <p>Turnover</p> <p>RFP TEXT:</p> <p>“The Department will pay the contractor, in one lump sum, the amount contained in Pricing Schedule G upon completion, to the Department’s satisfaction, of all tasks and deliverables required in the contractor’s Department approved turnover plan. The Department, in its sole discretion, may also withhold the Operations annual administrative fee for the final month of the contract. This amount, minus any amounts owed the Department pursuant to Section III N Service Level Agreements, will be paid upon completion, to the Department’s satisfaction, of all tasks and deliverables required in the contractor’s Department approved turnover plan.”</p> <p>DISCUSSION:</p> <p>Should turnover occur over an extended period of time, offerors should be able to define milestones that would enable milestone payments. Should milestones not be established, then would allowance of interim payments be considered?</p> <p>QUESTION(S):</p> <p>What Period of Performance or length of time should offerors assume for the Turnover Phase? Will the Department consider</p>	As shown on page I-3, the Turnover Phase will be approximately one year depending on the design of the system and the Department approved Turnover Plan.

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			including one or more interim payments?	No, payment will be made upon Department approval of all turnover deliverables.
267	V-18	NYS Administrative Requirements Section: O M/WBE UTILIZATION PLAN FOR SUB-CONTRACTING AND PURCHASING	This section says: "The goal for usage of M/WBE's is at least 25% of monies used for contract activities (Minority-owned – 15%; Women-owned – 10%)." Does "contract activities" include non-people related elements of the services such as postage, space (leases), furniture, hardware, software, and infrastructure?	Contract activities include the total cost of the contract.
268	ATT B	Attachment B Glossary of Terms	The R-MMIS will receive updates through First Data Bank tape transfers. Please provide the number of programs that require updates through First Data Bank, since First Data Bank charges per program.	Only one data feed is received from FDB which is used internally to update several modules. Details are available in the R-MMIS Procurement Library, in Inbound Outbound File Listing.
269	ATT I	Attachment I; Contract Requirements; Page 2	Topic/Issue: 2. TIME OF PERFORMANCE/SUSPENSION OF WORK RFP Text: 2.2. The Department reserves the right to stop the work covered by this proposal and the Contract at any time that the Department deems the Contractor to be unable or incapable of performing the work to the satisfaction of the Department. In the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable. If the cost thereof	

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			<p>exceeds the amount of the proposal, the Contractor and its surety shall be liable to the State of New York for any excess cost on account thereof.</p> <p>Discussion:</p> <p>The Department's ability to unilaterally stop work at any time represents a risk to the investment that a contractor will make during the early stages of the project in infrastructure, development, staffing, etc. In addition, the requirement for a contractor to bear cost for the difference between the cost of a replacement entity and a contractor's bid is a concern, since we have no ability to control a successor entity's approach or inefficiencies. Perhaps most importantly, the cancellation upon failure to perform "to the satisfaction of the Department" is especially onerous, since there are no objective guidelines to establish a contractor's non performance.</p> <p>Question:</p> <p>We request that the Department establish express criteria for cancellation of contractor work, as well as a formal cure process to be followed for all instances where the Department is considering stoppage of work. We also request that, in the event that, subsequent to a Department ordered stoppage, and the assignment of work to a successor, that the original contractor be allowed to arrange for an independent review of the work performed by the successor and the related costs, in order to validate the amount of the excess costs.</p>	The original RFP language meets the needs of the Department.
270	ATT I	Attachment I, 1. Contract Term	<p>RFP Text</p> <p>(With respect to extending this Contract as set forth in Section F, Page 1-7, of the RFP), if the Department elects to exercise any of the one (1) year option periods, notice shall be sent to the Contractor prior to the end of the current Contract period. If the Contractor has not received notice of the Department's</p>	

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			<p>intent to exercise such option, it shall then complete all remaining Turnover Task responsibilities specified in Section III.G.</p> <p>Question</p> <p>To allow the contractor sufficient time to plan and carry out its remaining turnover tasks, how far in advance of the contract's end date will the State send notice of its decision to exercise or not to exercise the option years?</p>	<p>It is anticipated that at least 90 calendar days notice would be provided.</p>
271	ATT I	Attachment I; Contract Requirements; Page 2	<p>Topic/Issue:</p> <p>2.TIME OF PERFORMANCE/SUSPENSION OF WORK</p> <p>RFP Text:</p> <p>2.3. The Department, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Department. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor shall comply with the suspension order. Activity may resume at such time as the Department issues a formal written notice authorizing a resumption of performance under the Contract.</p> <p>Discussion:</p> <p>The Department's ability to unilaterally stop work at any time represents a risk to the investment that a contractor will make during the early stages of the project in infrastructure, development, staffing, etc. The contractor cannot be in a position of having made these substantial investments, and have the contract suspended for an unknown period of time,</p>	

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			<p>and then potentially restarted, without a stated provision for compensation for the contractor's investment and carrying costs.</p> <p>Question:</p> <p>We request that a provision be added to this clause to compensate the contractor, in the event of work suspension for the contractor's investments and deliverables to date, and, in the event that the contract is not terminated at the time of suspension, to compensate the contractor for carrying costs until such time as the contract is restarted.</p>	The original RFP language meets the needs of the Department.
272	ATT I	Attachment I; Contract Requirements; Page 3	<p>Topic/Issue:</p> <p>3. SUFFICIENCY OF PERSONNEL AND EQUIPMENT</p> <p>RFP Text:</p> <p>3.3 If the Department is of the opinion that the services required cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, and to take steps to ensure satisfactory performance of services at no additional cost to the Department.</p> <p>Discussion:</p> <p>We are concerned about the inclusion of this clause in a fixed price contract, where provision of specific deliverables or service levels should be the standard for assessing performance. We believe that consistent delivery of conforming product, and any other objective criteria set forth in the contract, should be the sole criterion of success, rather than the opinion of the Department</p> <p>Question:</p> <p>We request that this provision be removed. As an alternative,</p>	The original RFP language meets the needs of the

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			we request that the Department modify this contract provision to state that criteria for performance and product, as established by the contract, be the criteria for determining satisfactory performance.	Department.
273	ATT I, Page 3	Attachment I – Contract Requirements; 3. Sufficiency of Personnel and Equipment; Item 2	Please provide the elements of the “security background check?”	These elements will not be disclosed at this time.
274	ATT I	Attachment I; Contract Requirements; Page 4	<p>Topic/Issue:</p> <p>5. SUBCONTRACTORS</p> <p>RFP Text:</p> <p>5.1 Subcontracting or substitution of any subcontractor by the Contractor shall not be permitted except by prior written approval and knowledge of the Department. For any proposed replacement or substitution before or after the award, the Contractor must provide the Department with references, resumes, and financial documentation, in addition to meeting all other applicable requirements, and submission of all applicable forms, in this RFP.</p> <p>Discussion:</p> <p>The entire matter of subcontracting is a particularly difficult issue with the Department, as it relates to differentiation between subcontractors and vendors. <i>Subcontractors</i> should be considered those entities that provide integrated services (e.g. hardware, software, staffing services) as a package, that are critical to the performance of the contract. All other entities, (e.g. hardware software companies, staffing services, outside</p>	

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			<p>consultants, etc should be considered to be <i>vendors</i>.</p> <p>Question:</p> <p>We request that the definition of subcontractor be clarified to confirm that generically available services and products that can be obtained from multiple vendors do not represent subcontracted service and products.</p>	<p>For purposes of this Contract the Department will not consider the procurement of commodities and services readily available from multiple vendors to constitute a subcontracting relationship that requires Department approval. For example, office supplies or janitorial services.</p> <p>An outside consultant will be considered a subcontractor.</p>
275	ATT I	Attachment I; Contract Requirements; Page 6	<p>Topic/Issue:</p> <p>7. CONTRACT INSURANCE REQUIREMENTS</p> <p>RFP Text:</p> <p>7.1 A fidelity bond or other security shall be maintained by the Contractor in a form satisfactory to the Department and in the amount of five million (\$5,000,000.00) dollars. The Contractor shall provide to the Department proof of the fidelity bond within ten (10) business days of notice from the Department of contract approval.</p> <p>Discussion:</p> <p>The amount of this bond is extremely high, representing a considerable increase over the bond required for the current eMedNY contract. The requirement for a fidelity bond, in addition to the \$50 million letter of credit required by section 8 of Attachment I is not explained. The loss at any given time in the performance of the contract is unlikely to approach the dollar amounts of these instruments, and it will be necessary for the offerors to include the premiums for these instruments in their bids, thereby raising the total contract price to the Department.</p> <p>Question:</p>	<p>The Department has determined that the dollar amounts are appropriate to the size of this contract. They will not be adjusted. The original RFP language meets the needs of the Department</p> <p>No, the fidelity insurance is not acceptable to the Department in place of a fidelity bond.</p>

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			Please explain the rationale for the extremely high dollar amount for both a fidelity bond and a letter of credit being required for this contract. Please explain the rationale for the large amounts for these financial instruments. We request that the dollar values required for both the fidelity bond and the letter of credit be reduced to be more closely aligned with the risk of loss associated with the contract. Please clarify that fidelity insurance for the required amount will be satisfactory to the Department as "other security" in lieu of a bond.	
276	ATT I	Attachment I – Contract Requirements Subsection 7.3i Page 7	This subsection states: "...The kinds and amounts of required insurance are... i. Contractor's Liability Insurance issued to and covering the liability of the Contractor with respect to all work performed by it under this proposal and the Contract." This offeror does not specifically purchase a Contractor's Liability policy. We carry a General Liability policy that provides premises and operations liability and completed operations coverage, which is what we believe the State is looking for. Please confirm that this is acceptable.	The original RFP language meets the needs of the Department.
277	ATT I	Attachment I – Contract Requirements Subsection 7.3i Page 7	This subsection states: "...The kinds and amounts of required insurance are: ... ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State." This offeror does not purchase Protective Liability to provide coverage to customers. Offeror can include the State as an additional insured on the General Liability policy, which provides this coverage where required by contract. Please confirm that this is acceptable.	The original RFP language meets the needs of the Department.
278	ATT I	Attachment I; Contract Requirements; Page 7	Topic/Issue: 7. CONTRACT INSURANCE REQUIREMENTS	

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			<p>RFP Text:</p> <p>7.3.b.i. Contractor's Liability Insurance issued to and covering the liability of the Contractor with respect to all work performed by it under this proposal and the Contract.</p> <p>Discussion:</p> <p>Typically liability insurance relates to coverage of negligence or tortious acts for death, bodily injury or harm to real or tangible personal property, but not for "all work performed". Coverage that conforms to this clause may be extraordinarily difficult to obtain, and likely will be very costly. Appropriate remedies for issues related to performance by the Contractor would be performance guarantees, monetary compensation for breach of contract or termination of the contract.</p> <p>Question:</p> <p>Would the Department clarify that the Contractor must maintain liability insurance to cover death, bodily injury, and injury to real or personal tangible property resulting from the willful misconduct or negligent acts or omissions of the Contractor and not for "all work performed"?</p>	<p>The original RFP language meets the needs of the Department.</p>
279	ATT I	Attachment I; Contract Requirements; Page 7	<p>Topic/Issue:</p> <p>7. CONTRACT INSURANCE REQUIREMENTS</p> <p>RFP Text:</p> <p>7.3.b.ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.</p>	

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			<p>Discussion:</p> <p>Protective liability insurance exclusively applies to construction contracts, and would not seem to apply to a fiscal agent contract.</p> <p>Question:</p> <p>Would the Department remove this requirement because it does not apply to the contract for the administration of the New York Medicaid program?</p>	<p>The original RFP language meets the needs of the Department.</p>
280	ATT I	Attachment I; Contract Requirements; Page 7	<p>Topic/Issue:</p> <p>7. CONTRACT INSURANCE REQUIREMENTS</p> <p>RFP Text:</p> <p>7.3.b.iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this Contract, by the Contractor or by its subcontractors, including omissions and supervisory acts of the State.</p> <p>Discussion:</p> <p>Most contractors should have automobile liability insurance coverage that would provide coverage for insurable events while the contractor's employees or agents were operating a vehicle owned, leased or borrowed by the contractor. We are unclear as to why such insurance would need to be issued to, or covering the People of the State of New York. .</p> <p>Question:</p> <p>We request the Department to modify this requirement so that a contractor must have appropriate automobile liability insurance that would provide coverage for insurable events while the</p>	<p>The original RFP language meets the needs of the Department.</p>

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			contractor's employees or agents were operating a vehicle owned, leased or borrowed by the contractor.	
281	ATT I	Attachment I; Contract Requirements; Page 7	<p>Topic/Issue:</p> <p>8. LETTER OF CREDIT</p> <p>RFP Text:</p> <p>Without additional cost to the Department, and as a material condition of the Contract, the Contractor must furnish, for the duration of the contract term (including any extensions) plus one hundred eighty (180) calendar days thereafter, an irrevocable Standby Letter of Credit (SLOC) for the benefit of the Department in the amount of fifty million (\$50,000,000) U.S. Dollars. The SLOC shall be issued by a financial institution ("Issuer") licensed to do business under the laws of the State of New York. The Issuer shall be subject to the approval of the Department. The form for the SLOC shall be subject to the approval of the Department. The Contractor must provide a draft SLOC to the Department within ten (10) business days of notice from the Department of contract approval. Failure to provide the draft SLOC to the Department within ten (10) business days of such notice will constitute grounds for termination for cause. The executed SLOC must be provided to the Department within ten (10) business days of the Department's approval of the draft SLOC. The Department reserves the right to extend the due date for the executed SLOC based on circumstances the Department determines to be reasonable. Failure to provide the final SLOC to the Department within the date set will constitute grounds for termination for cause. The SLOC must contain provisions that satisfy the following requirements:</p> <p>Discussion:</p> <p>The amount of this letter of credit is extremely high, representing a considerable increase over the \$20 Million letter</p>	

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			<p>of credit required for the current eMedNY contract. The loss at any given time in the performance of the contract is unlikely to approach the dollar amount of this instrument, and it will be necessary for the offerors to include the premium for this instrument in their bids, thereby raising the total contract price to the Department.</p> <p>Question:</p> <p>We request that the dollar value required for the letter of credit be reduced to be more closely aligned with the risk of loss associated with the contract.</p>	The original RFP language meets the needs of the Department.
282	ATT I	Attachment I; Contract Requirements; Page 8	<p>Topic/Issue:</p> <p>9. DEPARTMENT OVERSIGHT</p> <p>RFP Text:</p> <p>9.2 Whenever, by any provision of the Contract, any right, power, or duty is imposed or conferred on the State or the State agency, said right, power, or duty so imposed shall be possessed and exercised by the Contract Administrator. The Contract Administrator is authorized to delegate certain rights, powers, or duties. Notice of such delegation of authority will be conveyed to the Contractor in writing.</p> <p>Discussion:</p> <p>We are concerned that duties or powers may be delegated to a third party entity, such as an IVV contractor, which we believe would be inappropriate, and would further complicate DDI schedule progress, and acceptance of deliverables.</p> <p>Question:</p> <p>We request that the Department confirm that ultimate responsibility and authority for approval of contractor</p>	The original RFP language meets the needs of the

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			<p>deliverables and performance resides with the Department, and that the Department retain direct responsibility for all review and approval actions, whether performed by the Department or an agent. In the event an agent is used to review and approve contractor deliverables, we request that the agent not be compensated on a contingency basis for services rendered, and that any agents be required to bear fiscal and legal responsibility for any actions taken that negatively impact the contractor's ability to perform and meet contract schedules.</p>	Department.
283	ATT I	Attachment I; Contract Requirements; Page 8	<p>Topic/Issue:</p> <p>9. DEPARTMENT OVERSIGHT</p> <p>RFP Text:</p> <p>9.3 The Contract Administrator will issue, from time to time, such written specifications and instructions as may be necessary to clarify to the Contractor its scope of work and performance obligations. The Contract Administrator may periodically conduct evaluations, or request independent evaluations be conducted, of the Contractor's performance and deliverables. The Contractor shall promptly undertake such improvements and corrections as may be reasonably necessary to correct the problems or deficiencies identified in the periodic evaluations.</p> <p>Discussion:</p> <p>The imposition of additional specifications during execution of a fixed price contract is contrary to the inherent structure of this type of contractual arrangement. The definition of "problems and deficiencies" can be subjective, in particular when the evaluation is performed by an independent party that is not familiar with the specific terms of the contract; in some cases recommended improvements that are not in scope of the contract, are characterized as "problems and deficiencies". A</p>	

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			<p>contractor must prepare its fixed price based on specifications established by the RFP, and any expansion of scope that evolves from subsequent written specifications and instructions would not be funded.</p> <p>Question:</p> <p>We request that this clause be modified to commit the Department to either compensate the contractor for specifications and instructions that have the effect of increasing contract scope, or the to commit the Department and the Contractor to engage in good faith negotiations to add the requested scope to the contract and arrange for additional compensation.</p>	The original RFP language meets the needs of the Department.
284	ATT I	Attachment I – Contract Requirements, Section 12, Ownership Rights, item 1. Page 9	<p>This section states [our underline]: “1. Title and ownership to Existing Software Product(s) <u>delivered</u> by the Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner (“Existing Licensed Product”), whether or not embedded in, delivered_or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or the proprietary owner or other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor’s or ISV owner’s standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a royalty-free, non-exclusive, <u>perpetual license</u> to use, execute, reproduce, display, perform, adapt and distribute Existing Licensed Product to the Department with all license rights necessary to fully effect the purpose(s) stated in the RFP and (b) recognize the State as the Licensee where the Department is a state agency. Where these rights are not otherwise covered by the ISV owner’s standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.”</p> <p>a. Please provide a definition of the term “delivered” as used in the first sentence of this provision?” We construe this to</p>	a. Delivered means when any software is accepted by the

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			<p>refer to client-facing software and not to all software that may be used internally by the offeror to operate its business.</p> <p>b. Please clarify whether the State intends for the license grant to apply to third-party software, including COTS, as well as to the offeror's proprietary software.</p>	<p>Department's project manager for use in the R-MMIS.</p> <p>b. This requirement is for all software within the legal limitations of the license agreements when acquired by the contractor.</p>
285	ATT I	Attachment I; Contract Requirements; Pages 9-10	<p>Topic/Issue:</p> <p>12. OWNERSHIP RIGHTS</p> <p>RFP Text:</p> <p>12.1 Title and ownership to <u>Existing</u> Software Product(s) delivered by the Contractor under the Contract that is normally commercially distributed on a license basis by Licensed Product”), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with the Contractor or the proprietary owner or other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to the Department in accordance with the Contractor's or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant the Department a royalty-free, non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt and distribute Existing Licensed Product to the Department with all license rights necessary to fully effect the purpose(s) stated in the RFP and (b) recognize the State as the Licensee where the Department is a state agency. Where these rights are not otherwise covered by the ISV owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense.</p> <p>Discussion:</p> <p>We understand the term “Existing” products to be in reference to</p>	

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			<p>third party commercial products including COTS products. This clause is troublesome in that it grants the Department a royalty-free, non-exclusive, perpetual license, which is inconsistent with a contract with a defined term of eight years and specified extensions. Such a license to be obtained from those third parties would likely be costly, and not easily accommodated by the business practices of COTS and other third party product providers. This clause appears to be appropriate for an entity that directly licenses products to a state agency rather than a systems integrator. (Note: compliance with this requirement would be complicated by the large number of existing/COTS products that will be used, as well as a contractor's corporate procurement agreements.)</p> <p>Question:</p> <p>We request that the Department modify this standard so that licenses for "Existing" products be subject to the standard license transfer provisions of this contract (e.g., that at the end of the contract, the licenses be made available for transfer to the Department, wherever possible)..</p>	The original RFP language meets the needs of the Department.
286	ATT I	Attachment I; Contract Requirements; Page 10	<p>Topic/Issue:</p> <p>12. OWNERSHIP RIGHTS</p> <p>RFP Text:</p> <p>12.2 Consistent with 45 CFR Part 95.617, effective upon creation of <u>Custom</u> Products, the Contractor hereby conveys, assigns and transfers to the Department the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. The Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are</p>	

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			<p>protected against unauthorized copying, reproduction and marketing by or through the Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under this project in the course of the Contractor's business.</p> <p>Discussion:</p> <p>We understand that the Department is requesting the ownership of Custom Products based on federal regulations that require the Department to acquire ownership in software, or modifications of software, and associated documentation designed, developed or installed with funds received from Federal Financial Participation.</p> <p>Question:</p> <p>We request that the Department confirm that its request to have ownership rights in "Custom Products" is limited to ownership in software, or modifications of software, and associated documentation designed, developed or installed with funds from Federal Financial Participation.</p>	The RFP language is consistent with 45 CFR Part 95.617.
287	ATT I	Attachment I; Contract Requirements; Page 10	<p>Topic/Issue:</p> <p>12. OWNERSHIP RIGHTS</p> <p>RFP Text:</p> <p>12.3 Any publishable or otherwise reproducible material developed under or in the course of performing this Contract, dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the State, and shall not be published or otherwise disseminated by the Contractor to any other party unless prior written approval is</p>	

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			<p>secured from the State. Any and all net proceeds obtained by the Contractor resulting from any such publication shall belong to and be paid over to the State. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.</p> <p>Discussion:</p> <p>The Department's claim to ownership of any publishable or otherwise reproducible material is extremely broad, and would preclude a contractor from commercial use of ideas and products while working on this project, even if those ideas and products were to be developed at the contractor's own expense.</p> <p>Question:</p> <p>We request that the Department clarify that that its request to have ownership rights in "any publishable or otherwise reproducible material developed under or in the course of performing this Contract," is limited to ownership in software, or modifications of software, and associated documentation designed, developed or installed with Federal Financial Participation.</p>	<p>The RFP language is consistent with 45 CFR Part 95.617.</p>
288	ATT I	Attachment I; Contract Requirements; Page 11	<p>Topic/Issue:</p> <p>13. SOFTWARE LICENSES</p> <p>RFP Text:</p> <p>Where software and/or documentation is acquired on a licensed basis the following shall constitute the license grant:</p> <p>13.3 The Department shall have a royalty free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use, software, modifications to software, and documentation that is designed, developed, installed or enhanced as a part of this RFP. No right</p>	

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			<p>or interest in any trademark, trade name, or service mark is granted hereunder.</p> <p>Discussion:</p> <p>The contractor is not in a position to grant “royalty free, non-exclusive, and irrevocable licenses” to software and intellectual property that it does not own. Further, third party software vendors, which may be willing to transfer licenses or grant licenses to the Department, cannot be expected to do so without compensation.</p> <p>Question:</p> <p>We request that this clause be modified to state that the contractor be required, to the best of its ability, to arrange for license transfers or grants of licenses of software products that are necessary to support transferred systems, and that the Department or a successor contractor will assume responsibility for the license fees.</p>	The RFP language is consistent with 45 CFR Part 95.617.
289	ATT I	Attachment I; Contract Requirements; Page 15	<p>Topic/Issue:</p> <p>15. GENERAL WARRANTIES</p> <p>RFP Text:</p> <p>15.8 The Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any products transferred to the Department under this Contract. The Contractor shall be solely liable for any costs of acquisition associated therewith. The Contractor fully indemnifies the Department for any loss, damages or actions arising from a breach of said warranty without limitation.</p> <p>Discussion:</p>	

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			<p>This clause is troublesome because it appears that the Department is seeking an intellectual property indemnification for all licenses and products, some of which may not be the property of the contractor. The Department is also seeking an unlimited intellectual property indemnification.</p> <p>Question:</p> <p>We request that the Department clarify that this warranty is for intellectual property rights owned by the Contractor, and confirm that the Department and the Contractor will enter into negotiations for an appropriate indemnification of intellectual property rights.</p>	The original RFP language meets the needs of the Department.
290	ATT I	Attachment I; Contract Requirements; Page 15	<p>Topic/Issue:</p> <p>15. GENERAL WARRANTIES</p> <p>RFP Text:</p> <p>15.11 Notwithstanding prior acceptance of deliverables by the Department, the Contractor will expressly warrant all delivered programs and documentation as properly functioning and compliant with the terms of the Contract. The Contractor must correct, at no additional cost or expense to the Department, errors and design deficiencies in the system and replace incorrect or defective programs and documentation within one (1) week of notification from the Department of such deficiencies, or within such period as may be necessary to make correction(s) using due diligence and dispatch as agreed upon between the Department and the Contractor.</p> <p>Discussion:</p> <p>One of the guiding principles in a contractor's systems development approach is the practice of developing designs and applications that are fully consistent with Department-</p>	

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			<p>approved specifications. In cases where the Department accepts designs and subsequent deliverables as fully conforming to pre-established specifications, the products are deemed complete and properly developed. So long as the program operates and delivers results in accordance with documented specifications, a contractor is absolved of any responsibility to bear the cost of modifications not included in the original specifications. The impact of this clause is that the State's approval and acceptance of programs as conforming to specifications will no longer be the criterion to establish that the programs are properly functioning and compliant with the terms of the Contract. In particular, the concept of a design deficiency would be very difficult to define.</p> <p>Question:</p> <p>We request that this clause be modified to state that Department acceptance of deliverables constitute Department confirmation that the deliverables conform to agreed specifications, and that unless the deliverables do not conform to specifications, that any additional work required to revise or further modify the deliverables will constitute additional compensable work.</p>	The original RFP language meets the needs of the Department.
291	ATT I	Attachment I; Contract Requirements; Page 16	<p>Topic/Issue:</p> <p>15. GENERAL WARRANTIES</p> <p>RFP Text:</p> <p>15.12 If the Contractor fails to repair an identified error, deficiency or defect within such period, the Department may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse the Department for incurred costs. This warranty will be in effect throughout the term of the Contract and for one (1) year thereafter. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made</p>	

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			<p>during the Contract period also will be covered by this warranty. This provision shall not be construed as limiting rights or remedies provided for elsewhere in this Contract.</p> <p>Discussion:</p> <p>The requirement for a contractor to reimburse the cost of repairs is a concern, since we have no ability to control a successor entity's approach or inefficiencies. In addition, the definition of an "identified error" is not stipulated in the contract, and may include items that were delivered according to specification, consistent with the process described in item 15.11 above.</p> <p>Question:</p> <p>We request that this clause be modified to incorporate a reasonable cure period for the contractor to remediate any identified "error, deficiency, or defect" prior to the Department engaging another entity to perform the remediation activity. We further request that, in the event that the Department seeks outside services to perform any remediation activities, and seeks compensation from the contractor, that the contractor shall have the right to audit the modifications made and the related billings. Additionally, we request removal of the one-year warranty beyond the term of the contract because the contractor, having transferred the software to the Department or another entity, will have no control over the additional changes that will be applied to the software, which may conflict with the software as developed by the contractor, resulting in an incorrect interpretation of an "error, deficiency, or defect".</p>	<p>Please see RFP Attachment I Section 15.11 for cure period.</p> <p>The original RFP language meets the needs of the Department.</p>
292	ATT I, Page 19	Attachment I – Contract Requirements 16. Audit and Access to Premises and	<p>We understand that SAS-70 has been replaced by SSAE16. Will the state require the SSAE16audit be performed for the R-MMIS?</p>	<p>The RFP language is amended to read: "SAS-70 and subsequent publications that amend or replace SAS-70".</p>

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293	ATT I	Attachment I; Contract Requirements; Page 20	<p>Topic/Issue:</p> <p>17. DISPUTES</p> <p>RFP Text:</p> <p>17.1 If it becomes apparent that: (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the Contractor shall be deemed to have based its proposal upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.</p> <p>Discussion:</p> <p>The concern with this clause is that a contractor must prepare a firm fixed price based on specifications available at the time of proposal submission. The expansion of scope based on “supplementary information” is not consistent with a fixed price contract, and puts a contractor at risk for delivering expanded work without the benefit of a revenue stream. Further, the Contractor performs the work in the most cost effective manner, which is not always the most inexpensive manner.</p> <p>Question:</p> <p>We request that the Department modify this requirement to provide for a participative and not unilateral process in which the Department and the Contractor can resolve issues. We request that the Department confirm that it recognizes that this is a fixed</p>	<p>The original RFP language meets the needs of the Department.</p>

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			price contract, the performance of which is intended to be based on objective criteria such as compliance with performance requirements and delivery of services as described in the RFP and the contractor's proposal; and that any "supplementary information" provided to the contractor must be based on the objective criteria established in the contract.	
294	ATT I	Attachment I; Contract Requirements; Page 20	<p>Topic/Issue:</p> <p>17. DISPUTES</p> <p>RFP Text:</p> <p>17.2 In the event such conflict cannot be resolved, the Contractor and the Department agree to meet in good faith and use every reasonable effort to resolve such dispute and shall not resort to any formal proceedings to resolve such dispute until they have reasonably determined that a negotiated resolution is not possible. A designee of the Commissioner of the New York State Department of Health shall decide any dispute or controversy between the Department and the Contractor, which cannot be disposed of through negotiation. Both the Department and the Contractor shall present written statements of issues and facts in dispute. The designee of the Commissioner shall make a determination and issue a written decision within fifteen (15) calendar days. Upon issuance of such decision, the parties shall proceed diligently with the performance of this Contract and shall comply with the provisions of such decision.</p> <p>Discussion:</p> <p>This clause provides resolution powers to a designee of the Commissioner, rather than an impartial professional entity for dispute resolution We are concerned that the designees may believe that they are obligated to the Department because they</p>	

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			<p>are appointed by the Commissioner.</p> <p>Question:</p> <p>We request that the Department modify this requirement to establish a process for dispute resolution, such as mediation or mediated negotiation, to be conducted by a party mutually agreed upon by the Department and the Contractor.</p>	<p>The original RFP language meets the needs of the Department.</p>
295	ATT I	Attachment I; Contract Requirements; Page 20	<p>Topic/Issue:</p> <p>17. DISPUTES</p> <p>RFP Text:</p> <p>17.3 The decision of the designee of the Commissioner shall be final and conclusive unless the Contractor submits a written appeal to the Commissioner of the New York State Department of Health. Such appeal must be submitted within fifteen (15) calendar days of the date of the decision by the designee of the Commissioner. In the event of an appeal, the Commissioner shall promptly review the dispute resolution decision and shall confirm, annul, or modify it. The Contractor shall be afforded the opportunity to be heard de novo and offer evidence in support of its appeal. The decision of the Commissioner shall be final and conclusive.</p> <p>Discussion:</p> <p>The concern with this clause is similar to the thoughts expressed in item 17.2. It should be further noted that the clause stipulates that the dispute is considered fully resolved by the Commissioner, and does not provide a contractor with the opportunity to initiate a Section 78 action under New York law, or any other legal actions that might lead to relief.</p> <p>Question:</p>	<p>The original RFP language meets the needs of the</p>

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			We request that the Department modify this requirement to establish a process for dispute resolution, such as mediation or mediated negotiation, to be conducted by a party mutually agreed upon by the Department and the Contractor. The Department also could establish a process for arbitration to be conducted by an arbitrator (or panel) mutually agreed upon by the Department and the Contractor. We request that the Department confirm that any procedures established for dispute resolution under the contract do not preclude any other actions under the New York law.	Department.
296	ATT I	Attachment I; Contract Requirements; Page 21	<p>Topic/Issue:</p> <p>17. DISPUTES</p> <p>RFP Text:</p> <p>17.4 During the time that the parties hereto are attempting to resolve any dispute in accordance with the provisions of the Contract, each of them shall diligently perform its duties hereunder.</p> <p>Discussion:</p> <p>This clause effectively requires that a contractor provide disputed services or goods prior to resolution of the dispute, and is contrary to the dispute resolution process. This is particularly problematic in cases where the Department declines to pursue a contract amendment to facilitate scope expansion, or concludes that requested services are in scope, and uses this clause to compel the contractor to proceed.</p> <p>Question:</p> <p>We request the Department to confirm that if the Contractor provides services during a dispute resolution process, then the Department will pay for these services.</p>	Should a dispute arise under the contract, payment will be made for services subject to the terms and conditions of the RFP.

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297	ATT I	Attachment I; Contract Requirements; Page 22	<p>Topic/Issue:</p> <p>19. INDEMNIFICATION</p> <p>RFP Text:</p> <p>19.5 In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if the Contractor believes that it may be enjoined, the Contractor shall have the obligation, at its own expense and sole discretion as the State's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part(s) thereof, as applicable, (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the Department up to the dollar amount of the Contract Award. Time is of the essence in matters where the uses of any item(s) or part(s) thereof are enjoined.</p> <p>Discussion:</p> <p>This clause would make a contractor liable to provide compensation to the Department up to the amount of the full contract award. This level of compensation is clearly unreasonable, and excessive.</p> <p>Question:</p> <p>It is reasonable for the contractor to indemnify the Department for potential infringements; however, the dollar level of indemnification at "up to the dollar amount of the Contract Award" is excessive and not reasonable. We request that the Department substantially reduce the potential dollar impact of this penalty.</p>	<p>The original RFP language meets the needs of the Department.</p>

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298	ATT I	Attachment I; Contract Requirements; Page 22	<p>Topic/Issue:</p> <p>19. INDEMNIFICATION</p> <p>RFP Text:</p> <p>19.6 For all other claims against the Contractor where liability is not otherwise set forth in the Contract as being “without limitation”, and regardless of the basis on which the claim is made, the Contractor’s liability under the Contract for direct damages shall be limited to two (2) times the dollar amount of the contract including any amendments. Unless otherwise specifically enumerated herein, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.</p> <p>Discussion:</p> <p>The reservation expressed in item 19.5 applies to this item as well.</p> <p>Question:</p> <p>We request that the dollar amount for this clause, (which seems to be a “limitation of liability” clause) be capped for the total contract term, including any amendments, at an amount in the range of \$25 Million to \$30 Million.</p>	No, the original RFP language meets the needs of the Department.
299	ATT I	Attachment I; Contract Requirements; Page 22	<p>Topic/Issue:</p> <p>19. INDEMNIFICATION</p> <p>RFP Text:</p>	

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			<p>19.8 The Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due the Contractor, or may proceed against the performance and payment bond, maintenance or demolition bond, or letter of credit, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.</p> <p>Discussion:</p> <p>While it is not unreasonable to provide the Department with the right to recover amounts owed to a contractor, the clause above applies to “any claim” and does not provide a clear definition of how the legitimacy of claims would be established. This unilateral identification of “claims” may give rise to a contractor liability, and is a concern.</p> <p>Question:</p> <p>This is an “offset” provision. We request that this clause be removed because the Department has already established a process for resolving disputes in clause 17, including monetary disputes.</p>	No, the original RFP language meets the needs of the Department.
300	ATT I	Attachment I; Contract Requirements; Page 22	<p>Topic/Issue:</p> <p>19. INDEMNIFICATION</p> <p>RFP Text:</p> <p>19.9 The Department does not agree to any indemnification provisions that require the Department to indemnify or hold harmless the Contractor or third parties.</p> <p>Discussion:</p> <p>Indemnifications, if required, should be mutual in nature.</p>	

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			<p>Question:</p> <p>Because the Department expects the contractor to indemnify the Department for “personal injury or death, infringement, or damage to real or personal property, regardless of the nature of the damages sought for any such claim” the Department should correspondingly be willing to indemnify the contractor and any third parties.</p>	<p>No, the original RFP language meets the needs of the Department.</p>