

**DSRIP INDEPENDENT ASSESSOR
FUNDING AVAILABILITY SOLICITATION # 15649
QUESTIONS AND ANSWERS
(June 6, 2014)**

Proposal Requirements (General) / Other Questions

1. Question:

May the font size be less than 11 points for tables and charts provided the information is readable?

Answer:

Yes. Font size may be less than 11 points for tables and charts provided the information is readable.

2. Question:

FAS Section D.4.4. Section D.4.4. is a heading in the FAS under which all the section responses fall. Is any narrative expected under this heading and, if so, is there a page limit?

Answer:

No. Only respond to the response items (e.g. D.4.4.1, D.4.4.2.,) etc. with the prescribed page limits for each item.

3. Question:

Section D.4. states "Clearly number pages of the proposal, with each section of the proposal separately numbered and identified in a Table of Contents." Does this mean that the response to Section D.4.4.1 should be page numbered 1-8, D.4.4.2 should be paged numbered 1-10, etc.? If so, due to the requirement that the section headings must be numbered D.4.4.1, D.4.4.2, etc. how should the page numbers in the table of contents distinguish between the various sections? Would it be permissible to have the "plain" page numbers (e.g., 1, 2, 3, etc.) on the right hand side of the footer, with a designation of the Section number centered in the footer, but not part of the page number?

Answer:

Yes, the page numbers can run seriatim throughout the proposal as long as each section clearly identified in the proposal's Table of Contents.

4. Question:

FAS section D. 5.2., please confirm that financial statements are not to be submitted with the proposal.

Answer:

It is confirmed that financial statements are not to be submitted with the proposal.

5. Question:

Is Attachment L (Encouraging Use of NY Businesses) to be submitted with the proposal and, if so, should it be submitted with the Technical Proposal or the Cost Proposal?

Answer:

Please submit Attachment L with the cost Proposal.

6. Question:

Does DOH have a projected budget for the independent assessor project?

Answer:

There is not a “projected budget” for the assessor project. As with all procurements offered by the Department, there is approval from the Department’s fiscal Management Group and the Division of the Budget authorizing an indicated level of expenditure over the contract term. However, this amount can be amended upon their approval.

7. Question:

Please confirm that the FAS is not requiring actual DSRIP experience in other states, and if applicant does not have the experience, adequate discussion of how the applicant has and/or plans to obtain that knowledge base would be acceptable.

Answer:

It is not required that the respondent to the DSRIP assessor have experience with DSRIP in other states. The respondent should relate any work experience and expertise that is deemed relevant to performing the DSRIP assessor duties prescribed in the FAS.

8. Question:

Will there be an additional FAS for an Independent Evaluator role?

Answer:

There will be an Request For Proposal (not an FAS) for the Independent Evaluator, probably offered near the end of 2015.

9. Question:

To what extent, if any, will PPSs be exempted from the anti-trust rules and other gain sharing prohibitions?

Answer:

Article 29-F of New York’s Public Health Law authorizes the state to encourage appropriate collaborative arrangements among health care providers “who might otherwise be competitors.” The section further provides that to the extent such arrangements may be anticompetitive within the meaning of state and federal antitrust laws, the intent of the state is to supplant competition with such

arrangements under the active supervision and related administrative actions of the commissioner as necessary to accomplish the state's policy goals, and to provide immunity under the state and federal antitrust laws.

The regulations establish a process for providers to apply for a Certificate of Public Advantage (COPA) for their collaborative arrangements, including but not limited to mergers, acquisitions and clinical integration agreements, as well as planning processes intended to lead to such collaborative arrangements. A COPA will be granted if it appears that the benefits of the collaborative activities outweigh any disadvantages attributable to their anticompetitive effects.

10. Question:

The contract period for the Independent Assessor is stated as July 15, 2014 to March 31, 2019 (Section A, page 3). The Assessor Timetable of Deliverables (Section C.9 beginning on page 27) includes deliverables through February 29, 2020. Please clarify.

Answer:

As stated in the FAS E.7., the 2014-15 Enacted State Budget (see FAS Section C.11. Authorizing Procurement Statute) authorizing the Commissioner of Health to enter into contracts for the purpose of assisting the Department of Health with implementing projects authorized by the Centers for Medicare and Medicaid Services under its approved amendment to the 1115 Partnership Plan "without a competitive bid or request for proposal process", requires that the term of any such contracts cannot extend beyond March 31, 2019.

Based on current legislated authority, the Department will award a contract pursuant to this FAS for the period July 15, 2014 through March 31, 2019. Should that authority be extended in the future, the resulting contract may be extended by the Department. It is the Department's intent that an assessor contract be in place for the entire period of the DSRIP assessor's role.

11. Question:

The Independent Assessor and Support Team FASs clearly state that one firm will be contracted for each solicitation, and that the same firm cannot be contracted for both solicitations. Does this also preclude a single firm from being engaged as a subcontractor to both the IA and the DST prime contractors?

Answer:

Yes. A single firm is precluded from being engaged as a subcontractor to both the Assessor and the Support Team prime contractors.

Project Specifications

1. Question:

FAS Section C.1., all of the applicable sections in Section C.1. related to Section D.4.4.2. are directly aligned with the proposal response requirements in Section D.4.4.1 with the exception of Section C.2.b, C.2.c, C.2.d., C.1.e., and C.1.f. Under which subpart of Section D.4.4.2 of the technical proposal should these requirements be addressed.

Answer:

Not all project specifications are reflected in specific required technical proposal responses because the skills required are captured in other responses.

2. Question:

Section C.2.b. is to “conduct initial assessment of DSRIP Project Review Plans” but is a subsection under the mid-point review section. Should this be “mid-point” instead of “initial”?

Answer:

No. C.2.b. refers to an initial review of the Performing Provider system mid-point reports.

3. Question:

Section C.8. states, in addition to other core positions, there must be a Program Manager (MRT Project Management Office). However, the required Project Manager is shown on the organization chart as reporting to the MRT Project Management Office, while the Program Manager that also is associated with the Program Evaluation Lead and Data Analysis and Reporting Lead is shown on the organization chart as reporting to the DSRIP Performance Assessment and Improvement office. Please clarify where this Program Manager is placed.

Answer:

The Program Manager reports to the Director of DSRIP Performance Assessment and Improvement, while the Project Manager reports to the MRT Project Management Office. Both are required positions. The Project Manager will have overall responsibility for the project plan development and management, while the Program Manager will be responsible for day-to-day DSRIP performance assessment. It is important for the respondent to demonstrate that it will have a core management team in Albany containing individuals with the appropriate expertise for project and program management, with availability to the Department, in conformance with the DSRIP organizational structure depicted in the FAS.

4. Question:

In the Deliverables Table in Section C.9., there is a second listing mid-way through the table for all DSRIP years. Is this second listing in error and should it be removed from the Deliverables table? If not, please clarify the February 2014 dates that should be February 2015, and other inconsistencies between these duplicate parts of the Deliverables table.

Answer:

The correction has been made to indicate the dates are for 2015.

5. Question:

Regarding the Review Committee, the FAS says the State will appoint some and the vendor will appoint some. How many members will there be in total?

Answer:

There will probably be around 15-21 members of the review committee. Two will be appointed; one by the Speaker of the State Assembly and one by the Majority Leader of the State Senate. We are looking for non-conflicting individuals with the necessary expertise.

6. Question:

At the mid-point assessment will the panel re-convene to review what the assessor has found?

Answer:

The review panel will be involved with the initial Project Plan approval process. The mid-point review will be carried out by the independent assessor and the State may choose to reconvene the panel to review the assessor's recommendations.

7. Question:

FAS Section C.2.e states that the independent assessor will forward its midpoint assessment recommendations to the state and "the state will then accept or reject the panel's recommendations." Is this a typo? It is our understanding from the bidder's conference that the Review Panel will not be involved in the mid-point assessments.

Answer:

This is not a "typo", but the better answer is that "the state will then accept or reject the assessor's recommendations."

8. Question:

FAS C.3.e requires reporting compatibility with the State data portal. Is the State's system contractor developing a specific portal for this program? If so, what will the

Independent Assessor be required to develop in order to interface with the State's portal? If not, is the Independent Assessor required to develop the portal or to contract with the State's system contractor to jointly develop the portal?

Answer:

The assessor will have to work with the portal contractors (CMS, IBM and Salient) to help us build performance reports etc. that can be accessed by Performing Provider Systems through the portal but the assessor does not have to build the portal itself.

9. Question:

FAS C.7.a states that "*the assessor shall organize and support a series of learning collaboratives during DY1-DY5 of the DSRIP program...*" The Bid Form only allows for costs for the learning collaboratives beginning in DY1. Does this mean that the learning collaboratives function, including contractor staff for this function, is not to begin until the start of DY1? Will there be no allowable start-up activities for this function during DY0?

Answer:

There is nothing that prevents the contractor from preparing to do the learning collaboratives in DY0, but the FAS stipulates that at least one statewide face to face learning collaborative must be held in each year from DY1 through DY5. The FAS does contemplate that the start-up activities will begin in DY1.

10. Question:

Section C.8, the organization chart in this section appears to show that all of the contractor staff and functions must be located with and reporting to DOH managers. The requirements for an independent assessor include "...the capabilities to assess each application, without input from the State, based upon the scoring criteria approved by CMS." Can the bidder propose project staff and managers to perform application review and mid-point evaluations where such staff and managers are located in the bidder's office instead of the State's offices? If not, please clarify how it will be possible to achieve the required independence if all staff are co-located with State staff and essentially reporting to State managers.

Answer:

Yes, the bidder can propose staff located in the bidder's office to perform application review and mid-point evaluations. However, the staffing and location of the core management team in Albany is a requirement, per Section C.8. The bidder's staffing proposal should address the required interaction and communication between core management, DOH staff and assessor staff and any concerns the bidder has regarding co-location and independence. The FAS does not require that all the assessor's work be done on site at the Department.

11. FAS Section C.8.

If contractor staff are required (or desired) to be located in DOH offices, will a model that has the staff split time between DOH and contractor offices meet this requirement?

Answer:

“Located” means that the assessor’s management staff will be physically available most of the time at the Department and assigned specifically to the assessor duties. “Split time” is not the level of commitment contemplated by the FAS.

12. Question:

C.8., the organization chart in this section appears to show that all of the contractor managers/leads and functions must be located with and reporting to DOH managers. Can the bidder’s “additional staff” be located in the bidder’s office or must they be located in DOH offices?

Answer:

The “additional staff” is “as proposed by the assessor contractor”. Therefore, your response should indicate the extent to which they will be located at the Department.

13. Question:

C.10.a., the FAS states that “*The DISRIP assessor would be expected to offer a mix of economic and financial expertise, as well as expertise in industrial organization. Experts would likely have a Ph.D. in economics with at least 10 years of experience, including 5 years of experience analyzing health care transactions with a focus on antitrust and competitive issues in the health care marketplace.*” Further the FAS states that the contractor must provide an “*experienced project manager with experience in health care transformation.*” Are there any other qualifications requirements for any of the positions that will be provided by the Contractor? Also, please confirm that the contractor is expected to have an expert with the noted education and experience. If this is not a firm expectation, please indicate the education and experience factors that would be acceptable.

Answer:

C.10.a is giving guidance as to the significant expertise that the Department firmly expects to be assigned to the assessor project and will be reimbursing the contractor for. Given the importance of the DSRIP initiative, we confirm that the contractor is expected to have an expert with the demonstrated, relevant education and experience in the economics and transactions of the health care industry.

14. Question:

For the Mid-Point Assessment functions, is this function carried out under the Program Manager for Performance Assessment and Improvement or the Program Manager for DSRIP Program Administration?

Answer:

The Program Manager for Performance Assessment has primary responsibility and ownership for Mid-Point Assessment functions. However, the entire assessor core management team could have a role in performing the Mid-Point Assessment functions. Specific organizational role delineations and accountability for the Mid-Point Assessment would be made in consultation with the Department.

15. Question:

C.10., for the COPA and ACO reviews, is this function carried out under the Program Manager for Performance Assessment and Improvement or the Program Manager for DSRIP Program Administration?

Answer:

It appears most likely that a major role for COPA and ACO application reviews would be given to the Program Manager for DSRIP Program Administration, who in consultation with the Office of Health Systems Management and the Division of Legal Affairs, would develop program metrics and monitor project performance using the similar professional expertise required for the Performing Provider System assessments and recommendations to the Department. Specific organizational role delineations and accountability for the COPA and COLA reviews would be made in consultation with the Department.

16. Question:

For Section C.1.d Initial review of DSRIP Project Plan applications, we understand DOH is anticipating 25 to 50 applications, is this number still accurate? Also, can DOH confirm that this is the expected number of projects and not simply the number of participating Performing Participating Systems? For example, other states with DSRIP programs have 20 to 30 Performing Participating Systems, but over a 1,000 project individual DSRIP projects. Please clarify.

Answer:

The number of Performing Provider Systems (PPS) that will submit applications to the Department is unknown. However, at this time we anticipate between 25 and 50 PPS will submit applications, and there is only one application per PPS. As you can see, because the number is still unknown, the Bid Form has work volume thresholds that accommodate a range up to 75 and over applications.

17. Question:

For section C.3.h Site Visits/On-Site-Assessments, how many on-site assessments does DOH project that will be required per demonstration year? Will this be determined by the independent assessor?

Answer:

As C.3.h indicates, the assessor will conduct annual on-site visits of all Performing Providers to ensure continued compliance with DSRIP requirements. The contractor should plan for a minimum of 5 site visits for each Performing Provider System for the six DSRIP years. However, the assessor may conduct additional site visits as necessary in performing their role – such as related to the identification of at-risk providers.

18. Question:

For section C.6 Data Reporting and Storage System, would DOH be open to a web based solution to solve the Data Reporting and Storage System requirements?

Answer:

This is too general a question for a specific response, and would depend on the web based component of the solution. The Department would be “open” to a solution that meets the specifications of C.6. and C.6.a., including a system that will likely be resident in the state’s Medicaid Data Warehouse and will utilize its portal functionality, and must be compatible with and able to access information from the state’s Medicaid data warehouse portal.

19. Question:

For section C.6 Data Reporting and Storage System, what is the expected storage capacity for this database? In addition, how many end users are expected to access the database simultaneously?

Answer:

The storage capacity would need to be able to maintain all the relevant data elements prescribed in the FAS, that meet all the reporting requirements, have the capability of tracking Performing Provider Systems’ performance on their deliverables relative to the required delivery dates in the STCs, and generate alerts when anticipated deliverables are not received, etc. While the number of end users that could access the database simultaneously is uncertain, the FAS indicates that the system must be created using standard issue software installed on DOH employee laptops, along with documentation of its creation and functionality.

20. Question:

Staffing Plan/ Core Management Team (Sec C8), pg 25 indicates: "The DSRIP assessor contractor must provide the following positions: "Project Manager, Project Management Assistant, Program Manager (MRT Project Management Office),

Program Evaluator Lead, Data Analysts and Reporting Lead, and Program Manager (DSRIP Program Administration)." Which of these positions constitute core management team that must be based in Albany? Are all red-fronted positions on page 26 staff expected to be working out of Albany?

Answer:

Project Manager, Project Management Assistant, Program Manager (Performance Assessment and Improvement), Program Evaluation Lead, Data Analysis and Reporting Lead, and Program Manager (DSRIP Program Administration) constitute the core management team that must be based in Albany.

21. Question:

With the exception of creating additional benchmarks for at risk projects, what is the nature and scope of guidance the Independent Assessor will be providing to Performing Provider Systems who are deemed "at risk"?

Answer:

When needed, the assessor shall review additional deliverables from Performing Provider Systems, and if needed provide additional guidance via meetings and teleconferences to Performing Provider Systems who are deemed "at-risk." The assessor is responsible creating additional monitoring and oversight structures for these matters. The frequency of this activity will depend on the reporting frequency specified in the STCs or as needed.

22. Question:

How is the technical assistance outlined in section C.5. of the FAS distinct from the consulting services that the DSRIP Support team would provide? Will the technical assistance from the Independent Assessor be provided past DSRIP Year 1? Please clarify the nature and scope of the technical assistance to be provided related to "community needs assessment".

Answer:

The technical assistance provided by the Support Team is directed toward prototypes / templates that will help ensure a viable Performing Provider System application in DSRIP Year 0 and to developing the specific deliverables that are listed on the Support Team FAS, pages 26-27. Subsequent technical assistance will be provided to Performing Provider Systems by the Assessor. The technical assistance for community needs assessment would include assistance with identifying measures of healthy community, demographic and health status information, and local behavioral risk factors; and profiling community health care resources and local health care priorities.

23. Question:

Please clarify what is meant by “logic model”.

Answer:

A logic model would be used as a planning tool to clarify and graphically display what the DSRIP project intends to do, what it hopes to accomplish, and the impact. Most likely, the logic model would: summarize key program elements, explain rationale behind program activities, clarify intended outcomes, and provide a communication tool. In general, the logic model would be a map that clarifies and communicates what the project intends to do, and its presumed impact.

STC Attachment 1 – NY DSRIP Program Funding and Mechanics Protocol under IV DSRIP Project Plan Requirements indicates:

4) Identification of Provider Project to meet identified goals, including brief rationale for project choice and summary (including citations) of existing evidence showing that project can lead to improvement on goals of project. Logic models such as driver diagrams may be helpful to demonstrate how the elements of the project all contribute to the central goals. Further information will be provided in the detailed assessment provided in (5) and must include all relevant domains outlined in the Strategies Menu and Metrics.

Conflict of Interest

1. Question:

Please clarify the rules around maintaining conflict-free relationships for subcontractors and independent consultants. (All the questions below come from the perspective of an independent consultant seeking to work w/ either PPS or with State's vendor for either ST or IA)

a. Is there a meaningful difference in a status as a subcontractor (with predefined scope of work and deliverable) vs. as an independent consultant (perhaps working in a variety of ways to support the selected vendor, pretty much like an extra staff resource)? Does the rule/restrictions apply exactly the same way?

b. The rule seems to be that one cannot be in a conflicted arrangement at any given time, correct (i.e., no overlapping period of engagement)? Could a consultant work with a PPS or with a vendor for the Support Team, then several months after ending those relationships, get into a consulting arrangement with the Independent Assessor vendor?

c. It would seem that the potential for greatest conflict is for someone to be working with a PPS or be part of the regional/PPS support team then later be on assessment team that is evaluating the same PPS. However other consulting activities (i.e.,

lending subject matter expertise as well as development of tools/templates that will be used by PPS, support team, and/or evaluators) do not necessarily pose conflict of interest.

Answer:

- a. D.3 requires the bidder's conflict of interest disclosure to "include any relationship or interest, financial, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this FAS, including but not limited to any business relationship or financial interest with health care providers that receive DSRIP funding (e.g. members of Performing Provider Systems)." This standard applies to the bidder's intended subcontractors. If the bidder thinks there is a "meaningful difference" that would exempt the subcontractor from this standard, they should be prepared to demonstrate why a conflict of interest would be avoided in such an arrangement.
- b. We believe it would be an apparent conflict for a consultant to work with a PPS or with a vendor for the Support Team, then several months after ending those relationships, get into a consulting arrangement with the Independent Assessor vendor -- unless the Assessor vendor could demonstrate to the satisfaction of the Department that a conflict of interest would be avoided in that situation.
- c. It would be an apparent conflict of interest for someone to be working with a PPS or be part of the regional/PPS support team then later be on assessment team that is evaluating the same PPS. It would be an apparent conflict for the assessor to have other "consulting activities" (i.e., lending subject matter expertise as well as development of tools/templates that will be used by PPS, support team, and/or evaluators).

2. Question:

Please provide examples of the types and nature of business relationships with safety net providers that would constitute a conflict of interest for the Independent Assessor consultants?

Answer:

No, the Department will not provide examples. Bidders are encouraged to consult their own resources for guidance, and are encouraged to err on the side of caution in disclosing apparent conflicts of interest.

Under the Requirements of FAS Section D.3. The bidder's conflict of interest disclosure "must include any relationship or interest, financial, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this FAS, including but not limited to any business relationship or financial interest with health care providers that receive DSRIP funding (e.g. members of Performing Provider Systems)."

Technical Proposal

1. Question:

FAS Section D.4.4.9.e., in describing organizational experience in the multiple categories listed, if a bidder has teamed with a subcontractor that has specific experience in one or more of these areas, should the discussion of that experience be included within this section in order to give a complete picture of what the bidder is bringing or should it be confined to the discussion of subcontractors?

Answer:

Yes. Experience with a subcontractor can be included in the section, however the “direct” work / project management and implementation connection to the respondent’s organization should be described.

2. Question:

FAS Section D.4.4.9.h., the requirement for “all current and past” contracts would be difficult to construct for organizations that have a long history of government contracting. Is there a time limit, e.g., all current contracts and all past contracts that were in effect during the past three years? Also, if the list is extensive, it will disadvantage a highly experienced organization because of the space such a list will take. Can this list be included as an appendix and therefore not count toward the page limit?

Answer:

D.4.4.9. h. will now read as follows, to reflect a five-year limit:

Provide: (1) a list of all current and past government contracts awarded to the organization in the last five years including the name, title, and telephone number of the principle contact person for those contracts within the organization, and (2) a list of all current and past government contracts which the organization participated as a subcontractor in the last five years, including the name, title, and phone number of the principal contact person. This list may be provided as an appendix and is not subject to the D.4.4.9. page limitation.

3. Question:

Can the list of “all current and past” government contracts be confined to contracts that are similar in size, that is, the list would not include government contracts that are significantly smaller than the scope of work for this FAS.

Answer:

No. Please provide a list of all current and past government contracts awarded to the organization in the last five years.

4. Question:

FAS Section D.4.4.11. does not have a page limit, while all other preceding sections have a page limit. Is there a page limit for this section?

Answer:

Yes. The page limit was omitted in error. Response item D.4.4.11. Accountable Care Organization (ACO) Application Reviews has a 2 page limit.

5. Question

All of the applicable sections in Section C.1. related to Section D.4.4.1. are directly aligned with the proposal response requirements in Section D.4.4.1 with the exception of Section C.1.d., C.1.e., C.1.g., and C.1.h. Under which subpart of Section D.4.4.1 of the technical proposal should these requirements be addressed?

Answer:

Not all project specifications are reflected in specific required technical proposal responses because the skills required are captured in other responses.

Cost Proposal

1. Question:

Under which Deliverable on the Bid Form should the costs for C.4. At-Risk Project Identification, Guidance and Monitoring be reflected?

Answer:

The cost can be reflected in (and/or) 5a, 5b, 5c deliverables on the Bid Form.

2. Question:

May we add the applicable DY information to the three lines for items 4 a-c and 5 a-c? May we add cell borders in the shaded areas where they are missing to delineate **the separate DYs**?

Answer:

No. As the D.5.1 Bid Form indicates – these cells reflect bids for combined DSRIP Years.

3. Question:

Cells F and G in rows 31-34 and 46-49 are merged. Cells H and I in rows 36-39 and 51-54 are merged. May we unmerge them, since they should be two separate DYs for each of the rows?

Answer:

No. As the D.5.1 Bid Form indicates – these cells reflect bids for combined DSRIP Years.

4. Question:

The bid form is not inclusive of all costs to the contractor. How will DOH evaluate the overall cost?

Answer:

The respondent should create a bid by that is inclusive of their costs and cash flow needs – including startup costs, provision of any technologies, etc.. During the FAS award process, DOH may negotiate bids. As D.5. indicates, “All bids are subject to change subsequent to Department of health negotiation with any bidder.” As D.6. Indicates, the criteria used to evaluate the responses includes bid price.

5. Question:

Attachment H Bid Form, please confirm that the bid for each increment should be the total cost for each increment, rather than the base cost entered in the line for the 1-25 increment and only incremental costs entered into the subsequent three increments. For example, the bid price for 75 Mid-Point assessments in DY3 will be the price entered in line 2C for DY3, not the addition of lines 2A plus 2B plus 2C.

Answer:

The bids should reflect your proposed reimbursement level for the each of the four work volume thresholds, and not “the base cost entered in the line for the 1-25 increment and only incremental costs entered into the subsequent three increments”(as indicated in the question). For example, for Deliverable #1 DSRIP Project Plan Application Duties, bids would reflect proposed reimbursement based on whatever work volume threshold is actually determined the number of Performing Provider System applications received.

State of New York Standard Contract Clauses

1. Question

Please consider the following changes to the terms and conditions.

STATE OF NEW YORK - AGREEMENT

1. Section III.C: In the first sentence between “failure” and “and” insert “,opportunity to cure such failure,”

a. Replace V with the following:

A. Indemnification

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs of every name and description relating to personal injury

and damage to real or personal tangible property and intellectual property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

B. Indemnification Relating to Third Party Rights

The Contractor will also indemnify and hold the STATE harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the STATE in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the STATE's gross negligence or willful misconduct, provided that the State shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

If Usage shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the STATE the right to continue Usage (ii) to modify the service or Product so that Usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace said service or Product or part(s) thereof, as applicable, with non-infringing service or Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided the STATE is given a refund for any amounts paid for the period during which Usage was not feasible.

Appendix D, General Specifications

2. Section W (Contract Insurance Requirements):

a. Paragraph 1: In the second sentence delete "whether performed by it or by subcontractors" and delete "changed or"

b. Paragraph 1.b.ii: Delete.

c. Paragraph 1.b.iii: Delete.

3. Y. Confidentiality Clauses:

a. **Add at end of item 2. The Contractor retains all ownership rights in any proprietary methodologies, methods, processes, or procedures of the Contractor that pre-exist or were developed outside the scope of this Contract. If any such property of Contractor is contained in any of the deliverables hereunder, the Contractor grants to the City a royalty-free, paid-up, non-exclusive, perpetual license to use such Contractor intellectual property in connection with the City's use of the deliverables.**

b. **In item 4, in the second sentence add "hard" between "all" and "copies". In the current third sentence after "whatsoever" add "beyond the requirements of**

this Agreement’’. Add a new third sentence “All electronic copies shall be deleted.

Additional Clauses

4. We wish to discuss the addition of a limitation of liability clause if we are the successful vendor.

5. Use of Vendors – The State acknowledges that in connection with the performance of services under the Contract, Contractor may use the services of the vendor’s controlled entities and/or the vendor’s member firms to complete the services required by this contract. The State also acknowledges that in connection with the performance of services under the Contract, Contractor uses vendors within and without the United States to provide at Contractor’s direction administrative and clerical services to Contractor. These vendors may in the performance of such services have limited access to information, including but not limited to confidential information, received by Contractor from or at the request or direction of the State. Contractor represents to the State that each such vendor has agreed to conditions of confidentiality with respect to the State’s information to the same or similar extent as Contractor has agreed to pursuant this Contract. Contractor will have full responsibility to cause these vendors to comply with such conditions of confidentiality and Contractor shall be responsible for any consequences of their failure to comply. Accordingly, the State consents to Contractor disclosure to a vendor and the use by such vendor of data and information, including but not limited to confidential information, received from or at the request or direction of the State for the purposes set forth herein.

6. Management Decisions – The State acknowledges and agrees that Contractor’s services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the State. The Contractor will not perform management functions or make management decisions for the State

7. Third Party Usage: “Notwithstanding anything to the contrary in this Agreement, any advice, recommendations, information, deliverables or other work product provided to DOH under this Agreement is for the sole use of DOH, and is not intended to be, and may not be, relied upon by any third party, and all advice, recommendations, information, deliverables, or other work product may be marked to so indicate. Except for disclosures that are required by law or that are expressly permitted by this Agreement, DOH will not disclose or permit access to such advice, recommendations, information, deliverables, or other work product to any third party without the Contractor’s prior written consent.”

8. Electronic Communications – Contractor may communicate with the State by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. The State accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). The State agrees that the final hardcopy version of a document, including a deliverable, or other written communication that Contractor

transmits to the State shall supersede any previous versions transmitted electronically by Contractor to the State unless no such hard copy is transmitted.

9. State Vendors and Conflicts – The State is aware that Contractor may be providing assurance, tax and/or advisory services to other actual or potential vendors of the State. Contractor will perform an internal search for any potential client conflicts relating to any of the State’s vendors identified by the State as having a role in connection with Contractor’s performance of this Contract. The State hereby agrees that a vendor’s status as a Contractor client does not impact Contractor’s engagement to perform this Contract. Contractor will advise the State of any conflicts of interest that could prevent it from performing the Contract. However, Contractor is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in Contractor’s firm. Should any new information come to Contractor’s attention, Contractor will promptly inform the State. Contractor shall perform this Contract in accordance with applicable professional standards.

Appendix H BAA

10. In II. I delete “to Covered Program, or” and “Covered Program or”.

11. In III. C after “Information” add “for the proper management and administration of Business Associate, provided Business Associate complies with 45 C.F.R. § 164.504(e), or”.

12. In IV. B after “Program,” add “which shall be no less than thirty (30) days,”.

13. In IV. C. 2 delete “Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible,” in the second sentence.

14. V. Violations. In A replace “STATE” in the first sentence with “parties”.

15. In V. B add the following at the end: “In no event shall Business Associate be liable to the STATE for any consequential, indirect, special, or punitive damages.”

16. In VI in item “A” and “D” after “Program” add “and Business Associate”

17. In VI add a new item F as follows: “The parties shall use, disclose, or request only the minimum PHI necessary to accomplish the intended purpose of the use, disclosure, or request.”

18. In VI add a new item “G” as follows: “Encryption. Electronic Protected Health Information transmitted or otherwise transferred between the parties must be encrypted by a process that renders the Electronic Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of §13402 the HITECH Act and any implementing guidance, including but not limited to 45 C.F.R. § 164.402.”

Answer:

The Department may consider some modifications to the New York State Agreement at the time of the contract award.