



ERIE COUNTY MEDICAL CENTER CORPORATION

REQUEST FOR PROPOSALS

MEDICAL MALPRACTICE LEGAL SERVICES

[May 12, 2017]

RFP # 21712

The deadline for submission of proposals is **June 6, 2017 at 11 a.m. EST**. Submit one (1) sealed paper copy and one (1) electronic copy (on flash drive or CD-ROM) of the proposal to:

Erie County Medical Center Corporation
Attention: Sarina M. Rohloff
462 Grider Street - Room G-140
Buffalo, New York 14215

LATE OR INCOMPLETE BIDS WILL NOT BE ACCEPTED

Mark in left hand corner of envelope:

RFP # 21712

Due: June 6, 2017

Submitted by: _____

In accordance with State Finance Law Sections 139-j and 139-k, the designated contact for this RFP is listed below. All questions regarding this RFP must be submitted in writing to the designated contact within the timeframes set forth in the RFP Schedule. Copies of questions and responses will be issued to all respondents as an Addendum to this RFP as set forth in the RFP Schedule.

Sarina M. Rohloff, Srohloff@ecmc.edu

1. BACKGROUND

- 1.1 Erie County Medical Center Corporation (“ECMCC”), located in Buffalo, New York, is a public benefit corporation, created by state law on July 22, 2003. ECMCC previously operated as a department of the County of Erie, New York.
- 1.2 ECMCC has 602 inpatient acute, psychiatric, rehabilitation, and alcohol rehabilitation beds. ECMCC has more than 40 outpatient specialty care clinics with both on-site and off-site locations. In addition, ECMCC operates Terrace View, a skilled nursing facility with 390 beds.
- 1.3 As a Level 1 Trauma Center, ECMCC brings a special expertise and a high level of medical and surgical skill to every patient care department in the Hospital, from the Burn Treatment Center to the Acute Rehab Unit.
- 1.4 As the medical emergency response system for the entire county, ECMCC has one of the largest emergency departments in Western New York, with 29 exam rooms, including four for trauma, and a “fast track” program available for less critical emergencies.
- 1.5 ECMCC’s Regional Burn Treatment Center is the only unit of its kind in Western New York. With 24 hour burn care by a specially trained burn healthcare team, extensive rehabilitation programs, and comprehensive psychosocial support, the Burn Center is an integral part of ECMCC’s trauma services.
- 1.6 ECMCC is affiliated with the State University of New York at Buffalo and is recognized as a major teaching hospital in Western New York.

2. RESERVATION OF RIGHTS:

- 2.1 ECMCC reserves the right to qualify multiple respondents.
- 2.2 ECMCC reserves the right to reject any and all proposals submitted in response to this Request for Proposals (“RFP”).
- 2.3 ECMCC reserves the right to terminate this RFP process at any time.
- 2.4 ECMCC reserves the right to waive any non-conformity with the requirements of this RFP.
- 2.5 ECMCC reserves the right to seek clarification from a respondent at any time throughout the RFP process for the purpose of resolving ambiguities or questioning information presented in the proposal.
- 2.6 ECMCC reserves the right to apportion the award among one or more respondents.

3. RFP SCHEDULE:

RFP Issued:	Friday, May 12, 2017
Mandatory Pre-Proposal Conference Call:	Monday, May 22, 2017, 11 a.m.
Deadline for Questions:	Tuesday, May 23, 2017
Notification of Intent to Submit Proposal Due:	Tuesday, May 23, 2017
Answers Issued By Addendum:	Tuesday, May 30, 2017
Proposals Due:	Tuesday, June 6, 2017
Contract Award:	TBA

MANDATORY PRE-PROPOSAL CONFERENCE CALL:

A mandatory pre-proposal conference call is scheduled for Monday, May 22, 2017 at 11 a.m. EST. This conference call can be accessed by dialing 1-866-244-8528, Conference ID 898300. The purpose of this call is to provide an overview of the RFP and M/WBE requirements and permit respondents an opportunity to ask general questions surrounding these topics. Any content-specific questions however must be submitted in writing by Tuesday, May 23 to srohloff@ecmc.edu.

Participation in the pre-proposal conference calls is mandatory, unless documentation can be provided demonstrating extraordinary circumstances for missing the call. A “roll call” of potential respondents will be conducted at the end of each call. Proposals will only be accepted from respondents who participated in the pre-proposal conference calls and confirmed attendance during the roll call.

4. SCOPE OF SERVICES/SPECIFICATIONS:

Erie County Medical Center Corporation (“ECMCC”) invites proposals from experienced law firms with at least 15 years of experience in the area of defending medical malpractice claims and litigation to provide legal services to ECMCC on an as-needed basis in this practice area.

It is the responsibility of the respondent to inquire about and clarify any aspect of the RFP that is not understood. Pursuant to New York State Finance Law § 139-j, questions and requests for clarification must be directed in writing to the designated contact listed on the cover page of this RFP.

4.1 **SCOPE OF SERVICES**

ECMCC intends to pre-qualify one or more firms to provide outside legal representation in the area of medical malpractice defense. The firm or firms selected should have demonstrable qualifications to handle legal work in the area of medical malpractice defense.

4.2 **TERM**

ECMCC expects to select one or more law firms, pre-qualified to provide medical malpractice legal services to ECMCC on an as-needed basis. Firms shall remain pre-qualified for a period of thirty-six (36) months from the date of selection, and in the discretion of ECMCC, may remain pre-qualified thereafter. However, ECMCC retains the right to terminate engagement of any firm at any time. ECMCC shall not be liable for any expenses incurred in the preparation of and/or presentation of

responses to this RFP.

4.3 **THE REVIEW PROCESS**

No in-person interviews are expected to be conducted, but ECMCC reserves the right to conduct telephone or other interviews and make such inquiries as ECMCC determines to be appropriate. The review process will focus on the capabilities and experience of each firm as it relates to medical malpractice as well as the anticipated cost of legal services and disbursements. ECMCC intends to choose law firms whose qualifications will be most advantageous to ECMCC based on the criteria set forth in this RFP. ECMCC reserves the right, however, to reject any and all responses received, and also to waive any irregularity or informality if it is deemed to be in the best interest of ECMCC.

4.4 **ACCEPTANCE/REJECTION**

ECMCC reserves the right to accept or reject any or all of the proposal(s) and to select the proposal(s) which, in the opinion of ECMCC, will be in ECMCC's best interest. ECMCC also reserves the right to reject the response of any respondent that has previously failed in the proper performance of legal services on behalf of ECMCC. ECMCC specifically may choose other than the lowest cost proposals in order to provide the requisite services under the terms and conditions which, in ECMCC's sole judgment, are deemed to be in the best interest of ECMCC.

The issuance of this RFP constitutes only any invitation to present proposals. ECMCC reserves the right to determine, in its sole discretion, whether any aspect of the proposal satisfactorily meets the criteria established in the RFP. ECMCC reserves the right to seek additional information and/or clarification from any respondent, the right to negotiate with any respondent submitting a response, and the right to reject any or all responses, with or without cause. In the event that the RFP is withdrawn by ECMCC for any reason, ECMCC shall have no liability to any respondent for any costs or expenses incurred in connection with this RFP or otherwise.

4.5 **PROPOSAL REQUIREMENTS**

4.5.1 **Transmittal Letter** – Each response should be accompanied by a letter of transmittal not exceeding two (2) pages which summarizes key points of the response and which is signed by an officer or representative of the firm authorized to commit the firm's resources. This letter should also indicate the mailing address of the office from which the proposal is submitted, name of the individual who will represent the firm as the primary contact person for the proposal and the telephone numbers, email address and facsimile numbers of the primary contact person.

4.5.2 **Questions** – Responses to this RFP should address the following subjects:

1. **Experience**. Please describe the firm's experience relating to medical malpractice on behalf of hospitals, health systems, municipal entities, and others.

2. **Personnel**. Please identify the people who will be assigned to work on legal matters for ECMCC, if your firm is chosen, and provide brief resumes, including information about relevant education, experience and abilities. Significant factors to highlight in this area will include the actual years of experience of individuals included in the response (a) litigating the defense of medical malpractice suits against hospitals/health systems, (b) litigating before judges and juries in Western New York, and in particular, Erie County, New York, and (c) the specific types of malpractice suits

handled by those individuals identified by the applicant.

All services must be performed by employees of the responding law firm absent an express disclosure in the proposal and an explanation of the reason for such arrangement and prior approval by ECMCC.

3. References. Identify three (3) professional references that ECMCC can contact with respect to the professional services and billing practices of the firm. For each reference, include, name, title, address and phone number.

4. Fees. Please provide at least three (3) proposed fee schedules, pursuant to the following guidelines:

- a. A discounted set of hourly rates for partners, associates, non-attorney law clerks and paralegals that reflects at least a fifteen percent (15%) discount off the rates usually charged for the professional services of such persons; and
- b. A proposed flat fee schedule for services to be performed during the pre-suit, in-suit discovery, trial, and appeal segments, with an explanation for how the flat fee was calculated; and
- c. At least one other proposed alternative billing arrangement that you deem appropriate, including, but not limited to, phase and suspense file, cost plus, unit task billing or blended hourly rate billing, with an explanation of the reason you chose that method and how the rate or fee was calculated.

Please identify all disbursements the firm intends to charge in connection with its representation of ECMCC. Please assume that the billing arrangements you propose will not be subject to change for the first 36 months of service following pre-qualification. No firm, including those located outside western New York, will be reimbursed for any time or out of pocket expenses associated with any travel to Buffalo, New York, to provide the services set forth in this RFP.

5. Malpractice Insurance. Successful firms will be required to provide a certificate of insurance evidencing malpractice coverage with single occurrence limits of no less than five million dollars (\$5,000,000).

6. Conflicts. Respondents must identify any present or former clients that may present a conflict of interest in respondent's representation of ECMCC, including, but not limited to, other health care systems, physician practice groups and individual physicians that the firm represents. The firm's response to this subsection 6 should not be limited to strict legal conflicts of interest, but should include information relating to those firm clients that may be in a similar or related business. The proposal also should identify (1) any individual client for whom the firm performs legal services who is currently or has previously been employed by ECMCC or its predecessor, Erie County Medical Center Healthcare Network (include the name, title, and department of such client); (2) any officer or employee of the firm who is currently or has previously been employed by ECMCC or its predecessor, Erie County Medical Center Healthcare Network (include the name, title, and department of such employee or officer); (3) any other individual or entity for which the firm has performed legal services or has/had an association with that may present a legal or business conflict of interest. Also, please describe the firm's policies and procedures for handling conflicts of interest which may arise in the course of an engagement with ECMCC, and ECMCC's rights under such circumstances.

7. M/WBE participation. Vendors are required to facilitate minority and women- owned business enterprise (“MWBE”) participation as described in Section 6 below and Exhibit A and Exhibit A-1, attached. Vendors are encouraged to reach goals through the participation of a joint venture with another firm. For example, in such a scenario, Firm A may not be MWBE certified, but may have medical malpractice expertise. By comparison, Firm B may be certified but does not have extensive malpractice experience. Firm A and Firm B can enter into a joint venture to provide legal services. Vendors interested in pursuing such an arrangement should contact the Empire State Development Division of Minority and Women’s Business Development (<http://esd.ny.gov/ContactUs.asp>) for further information and guidance on structuring joint venture proposals.

5. EVALUATION CRITERIA:

Responses to this RFP will be evaluated under a scoring system that awards points up to the maximum set forth in the following criteria:

- 5.1 **References (35 pts).** Level of firm’s experience relating to medical malpractice on behalf of hospitals, health systems, municipal entities, and other entities of similar size.
- 5.2 **Plan (35 pts).** Evaluation of firm’s plan to achieve deliverables described in Section 4.
- 5.3 **Personnel (15 pts).** Level of expertise of firm individuals assigned to work on ECMCC legal matters.
- 5.4 **Fees (15 pts).** Evaluation of firm’s proposed fee schedules.

6. M/WBE REQUIREMENTS AND DIVERSITY PRACTICES:

- 6.1 Equal Opportunity, Service-Disabled Veteran-Owned Business, and Minority/Women-Owned Business Enterprise Utilization. ECMCC is committed to promote equality of economic opportunity for minority group members and women, service-disabled veterans, and the facilitation of minority and women-owned business enterprise (“MWBE”) and service-disabled veteran-owned business (“SDVOB”) participation. In accordance with Articles 15-A and 17 of the New York State Executive Law and the regulations set forth at 5 NYCRR Parts 140-144 and 9 NYCRR Part 252, by submitting a proposal, the respondent agrees to be bound by the provisions set forth in Exhibit A to this RFP.
- 6.2 Utilization Plans. If Exhibit A reflects that MWBE and/or SDVOB participation goals apply to this RFP, Respondents are required to submit an MWBE and/or SDVOB Utilization Plan (see Exhibit A-1) with their proposal in accordance with 5 NYCRR 142.6(a) and 9 NYCRR 252.2(i). The Utilization Plan should list each NYS Certified MWBE / SDVOB the respondent intends to utilize to perform the contract, a description of the scope of work to be performed by each MWBE / SDVOB, and the estimated or, if known, actual dollar amounts to be paid to each MWBE / SDVOB. Respondents shall utilize MWBEs / SDVOBs as subcontractors, subconsultants, suppliers, and/or enter into joint venture or teaming agreements with MWBEs / SDVOBs in order to comply with the MWBE / SDVOB utilization requirements set forth in Exhibit A.

- 6.3 MWBE Respondents. In the event that a respondent is a certified MWBE, the respondent must nevertheless utilize at least one other MBE or WBE firm to satisfy the total MWBE goals of the RFP. For example, if the respondent is a certified MBE, the respondent must engage WBE participation to satisfy the MBE portion of the goal. If the respondent is a WBE, the respondent must engage MBE participation in order to satisfy the WBE portion of the goal.
- 6.4 Excluded Contracts. Certain procurements are excluded from MWBE and/or SDVOB participation. The goals for each RFP are reflected in Exhibit A of this RFP. In the event that Exhibit A reflects no utilization goals applicable to this RFP, the RFP is for an expenditure that is excluded from ECMCC's MWBE or SDVOB program and respondents are not required to submit an MWBE and/or SDVOB Utilization Plan. However, under all circumstances, respondents are encouraged to solicit MWBE and SDVOB utilization and to submit MWBE and SDVOB Goal Plans, and ECMCC may consider respondent's proposed MWBE and SDVOB utilization in determining which proposal represents the best value to ECMCC.
- 6.5 Not-for-profit respondents. Any services that are self-performed by a not-for-profit respondent (i.e., services not procured in the open market) in response to this RFP, as well as any personal services, rent, and utilities costs related to this procurement, are exempt from the MWBE goals that have been assigned to this procurement. After exempting personal services, rent, utilities and self-performance, MWBE goals will still attach to the entire remainder of the funds of the procurement.
(For example, if the respondent's proposal for this procurement is \$100,000, and \$80,000 of this amount is comprised of personal services, rent, utilities and self-performance by the not-for-profit, then the remaining \$20,000 would still be subject to the MWBE goals assigned in this contract.)

This exception applies solely to not-for-profit respondents. For the purposes of calculating which funds shall still be subject to MWBE requirements, all not-for-profit respondents should fill out and return the attached Exhibit E.

Respondents who are for-profit organizations are still required to apply the MWBE goals to the full amount of this procurement in their proposals. Please note that all parties are still responsible for submitting utilization plans (as detailed in Exhibits A and A-1) with their proposals that cover all services that are not exempt as described in the above.

- 6.6 Diversity Practices. Respondents are encouraged to submit information regarding vendor's diversity practices, which ECMCC may consider in determining which proposal represents the best value to ECMCC.

7. PROPOSAL REQUIREMENTS:

- 7.1 Proposals must include the following information:
- 7.1.1 Detailed plan outlining how your company will meet all of the deliverables described in the Section 4 (Scope of Services/Specifications).
- 7.1.2 Company profile including organizational chart indicating persons who will be assigned to work with ECMCC and their resumes, including length of time with the organization.

- 7.1.3 Disclose whether respondent has ever had a contract terminated and if so, provide a detailed explanation of the contract and circumstances surrounding termination.
- 7.1.4 Disclose whether any shareholder, director, officer or employee is currently employed by ECMCC, or was an employee of ECMCC during the two (2) year period preceding the date of the proposal, and if any shareholder, director, officer or employee is a member of any governing board of ECMCC or its affiliates.
- 7.1.5 Disclose any other areas that may be a potential conflict of interest.
- 7.1.6 Describe all contracts, affiliations, referral arrangements or other business relationships the respondent has with any hospital, health care system or health care provider with offices or facilities in Western New York.
- 7.2 The following forms must be submitted with each proposal:
 - 7.2.1 M/WBE Utilization Plan - Form MWBE 100 (Exhibit A-1) (see Section 6).
 - 7.2.2 Respondent Data Form (Exhibit B).
 - 7.2.3 Non-Collusive Bidding Certification (Exhibit C).
 - 7.2.4 Disclosure, Affirmation and Certification in accordance with State Finance Law §§ 139-j and 139-k (Exhibit D).
 - 7.2.5 Not-for-profit budget form (Exhibit E) (note this form is only required if the respondent is a not-for-profit corporation).

8. GENERAL INSTRUCTIONS TO RESPONDENTS:

- 8.1 **The proposal** must be submitted following the outline format of the RFP (i.e. answer questions and submit requirements in the same order and under the same heading as the outline), or the response will not be considered. The response must be typed and original autograph signatures in ink are required. Facsimile or rubber stamp signatures will not be accepted.
- 8.2 **Any change in wording or interlineations by a respondent of the inquiry** as published by ECMCC shall be reason to reject the proposal of such respondent, or in the event that such change in the RFP is not discovered prior to entering into a contract, to void any contract entered into pursuant to such RFP.
- 8.3 **For the purpose of determining which respondent is the lowest qualified responsible vendor**, it shall be the obligation of all respondents to present information and documentation to ECMCC to establish that the respondent possesses sufficient capital resources, skill, judgment and experience to perform the work or deliver the material, as per the RFP scope of services and specifications. ECMCC does not obligate itself to accept the lowest or any other proposal.

- 8.4 **Failure to perform** or meet delivery schedules as per the accepted proposal may result in legal action by ECMCC to recover damages.
- 8.5 **No taxes are to be billed to ECMCC.** Proposals shall not include any Federal, State or local excise, sales, transportation or other tax, unless Federal or State law specifically levies such tax on purchases made by a political subdivision. The ECMCC purchase order is an exemption certificate. Any applicable taxes from which ECMCC is not exempt shall be listed separately as cost elements and added into the total net price.
- 8.6 **The successful respondent may not assign, transfer, convey, sublet or otherwise dispose** of any contract awarded pursuant to this RFP, or respondent's, right, title, or interest therein, or respondent's power to execute such contract, to any other person or corporation without ECMCC's prior written consent. An assignment or transfer without ECMCC's prior written consent shall revoke and annul such contract, and ECMCC shall be relieved and discharged from any and all liability and obligations under such contract to the contractor, and to the person or corporation to which the contract has been assigned, transferred, conveyed, sublet or otherwise disposed of, and the contractor, and his assignees, transferees or sublessees shall forfeit and lose all moneys earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent, or affect an assignment by any such contractor for the benefit of his creditors made pursuant to the laws of the State of New York.
- 8.7 **The successful respondent shall comply with all laws, rules, regulations and ordinances** of the Federal Government, the State of New York and any other political subdivision or regulatory body which may apply to its performance under this contract.
- 8.8 **Insurance** shall be procured by the successful respondent before commencing work and no later than fourteen (14) days after notice of award, which insurance shall be maintained without interruption for the duration of the Contract in the kinds and amounts specified by ECMCC. If the insurance is not provided in acceptable form within this period of time, then the Director of Purchasing may declare the vendor non-responsible and award the contract to the next lowest responsible vendor. Certificates of insurance shall be furnished by the successful respondent in conformity with the ECMCC Standard Insurance Certificate.
- 8.9 **Any cash discount** which is part of a proposal will be considered as a reduction in price in determining the award of the proposal.
- 8.10 **ECMCC may, as the need arises, through the Director of Purchasing, order changes** in the work through additions, deletions or modifications without invalidating the contract. Compensation, as it may be affected by any change, shall be adjusted by agreement between the contractor and ECMCC through the Director of Purchasing.
- 8.11 **Any additional information** which the respondent desires to add to the response shall be attached to and submitted with the formal sealed response on a separate sheet of paper.
- 8.12 **The successful respondent** to whom a contract is awarded shall defend, hold harmless and indemnify ECMCC and its agents and employees from and against all claims, damages, losses or causes of action arising out of or resulting from such vendor's performance pursuant to such contract.

- 8.13 **All contractors** who will perform services at any of ECMCC facilities must be credentialed through ECMCC's chosen credentialing service at contractor's expense.
- 8.14 **The proposal is firm and irrevocable for a period of 60 days** from the date and time of the proposal opening. If a contract is not awarded within the 60 day period, a respondent to whom the contract has not been awarded may withdraw his proposal by serving written notice of his intention to do so upon the ECMCC Purchasing Department.
- 8.15 **Prices charged to ECMCC** are to be no higher than those offered to any other governmental or commercial consumer. If respondent's organization has a New York State or a Federal GSA contract for any of the items covered in this RFP or any similar items, respondent shall so indicate in its proposal and supply a copy of such contract within five (5) days of a request by ECMCC.
- 8.16 **Price is firm.** The unit prices shall remain firm, and any other pricing, quote or charges in the proposal shall also remain firm, for delivery of the equipment, material, work or services described in this RFP. No cost increase not covered in the proposal shall be charged for any reason whatsoever unless agreed upon by ECMCC.
- 8.17 **Extension of price protection.** Any contract entered into pursuant to this RFP to supply the ECMCC requirements of goods and/or services for a definite period of time as stated in the attached specifications may be extended for not more than two (2) successive periods of equal length at the same proposal price upon the mutual agreement of the successful respondent and ECMCC. All extensions shall be submitted in writing and shall have prior approval by the ECMCC Director of Purchasing.
- 8.18 **In executing this proposal,** the respondent affirms that all of the requirements of the specifications are understood and accepted by the respondent, and that the prices quoted include all required materials and services. The undersigned has checked all of the proposal figures and understands that ECMCC will not be responsible for any errors or omissions on the part of the undersigned in preparing the proposal. Mistakes or errors in the estimates, calculations or preparation of the proposal shall not be grounds for the withdrawal or correction of the proposal or proposal security.
- 8.19 **The following executory clause shall be a part of any agreement entered into pursuant to this RFP:**
- It is understood by the parties that this agreement shall be executory only to the extent of the monies available to the Erie County Medical Center Corporation and appropriated therefore, and no liability on account thereof shall be incurred by the Erie County Medical Center Corporation beyond the monies available and appropriated for the purpose thereof. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.
- 8.20 **Restrictions on contact during the RFP process.** Pursuant to State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communication between respondents and ECMCC during the procurement process. A respondent is restricted from making contacts from the date the RFP is issued through the final award and approval of the procurement contract by ECMCC (the "Restricted Period"). During the Restricted Period, respondents may only contact the designated contact regarding this RFP. The designated contact is identified on the cover page of

this RFP. Respondents are responsible for reviewing ECMCC's Procurement Disclosure Policy and complying with State Finance Law Sections 139-j and 139-k. Directors, officer and employees of ECMCC are required to record certain information when contacted during the Restricted Period. A review of whether such contacts were permissible contacts will be considered in connection with any determination of responsibility of the respondent. Failure of any respondent to timely certify or to disclose accurate and complete information or the submission of any intentionally false or intentionally incomplete certification may result in the rejection of the contract award or if such contract has been executed, then the immediate termination of the contract. Violations may result in debarment of the respondent from proposing on or obtaining governmental procurement contracts in the State of New York.

- 8.21 **Freedom of Information Law.** During the evaluation process, the content of each RFP will be held in confidence and details of any RFP will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. If the proposal contains any such trade secrets or other confidential or proprietary information, the respondent must submit a request to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempt from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a proposal from disclosure have generally not been found to be meritorious and are discouraged. Respondents must limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the respondent's competitive position. ECMCC assumes no responsibility for disclosure of unmarked data for any purpose. ECMCC will review such designations in making its determination whether disclosure is required, which determination shall be binding on the respondent.

EXHIBIT A

ERIE COUNTY MEDICAL CENTER CORPORATION MWBE, SDVOB AND EEO PROGRAM REQUIREMENTS

I. General Provisions

- A. ECMCC is required to implement the provisions of New York State Executive Law Article 15-A and Article 17, as well as 5 NYCRR Parts 142-144 (“MWBE Regulations”) and 9 NYCRR Part 252 (“SDVOB Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the ECMCC, to fully comply and cooperate with ECMCC in the implementation of New York State Executive Law Article 15-A and Article 17. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State certified minority and women-owned business enterprises (“MWBEs”) and service-disabled veteran-owned businesses (“SDVOBs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 and 9 NYCRR §252.2 and shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VIII of this Appendix or enforcement proceedings as allowed by the Contract.

II. SDVOB Contract Goals

- A. Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. ECMCC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ECMCC contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.
- B. For purposes of this procurement, ECMCC conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

EXHIBIT A

- C. Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

III. MWBE Contract Goals

- A. For purposes of this Contract, ECMCC hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE"), comprised of specific goals of 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

Additionally, Contractor is encouraged to contact ECMCC's MWBE Coordinator at (716) 898-4947 and the Division of Minority and Woman Business Development at (518) 292-5250, (212) 803-2414, or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to ECMCC for liquidated or other appropriate damages, as set forth herein.

IV. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
 - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading,

EXHIBIT A

demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. The Contractor shall submit an EEO policy statement to ECMCC within forty-eight (48) hours after the date of the notice by ECMCC to award the Contract to the Contractor.
3. If Contractor does not have an existing EEO policy statement, Contractor may adopt the attached model statement (Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

EXHIBIT A

D. Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to ECMCC of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

V. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the Contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ECMCC shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Waivers

- A. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request

EXHIBIT A

is complete, ECMCC shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

- B. If the ECMCC, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, ECMCC may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VII. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report to ECMCC by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VIII. Liquidated Damages - MWBE Participation

- A. Where ECMCC determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to ECMCC liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the ECMCC, Contractor shall pay such liquidated damages to ECMCC within sixty (60) days after they are assessed by ECMCC unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the ECMCC.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (awardee/contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract

Agreed to this _____ day of _____, 2_____

By _____

Print: _____ Title: _____

**EXHIBIT A-1
M/WBE UTILIZATION PLAN**

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) under the contract. Attach additional sheets if necessary.

Offeror's Name:
Address:
City, State, Zip Code:
Telephone No.:
Authorized Representative:
Authorized Signature:

Federal Identification No.:
Location of Work: _____
RFP or Bid No.:
M/WBE Goals in the Contract: 20%
MBE Goals in the Contract: 10%
WBE Goals in the Contract: 10%

1. Certified M/WBE Subcontractors/Suppliers Name, Address, Email Address, Telephone No.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts/ Supplies/Services and intended performance dates of each component of the contract.
1.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
2.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
3.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
4.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
5.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
6.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

7.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
8.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
9.	NYS ESD CERTIFIED <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A REQUEST FOR WAIVER FORM (M/WBE 104).			
PREPARED BY (Signature): DATE: NAME AND TITLE OF PREPARER (Print or Type): SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.	<table border="1"> <tr> <td data-bbox="1192 527 1526 738">TELEPHONE NO.:</td> <td data-bbox="1526 527 2053 738">EMAIL ADDRESS:</td> </tr> </table>	TELEPHONE NO.:	EMAIL ADDRESS:
TELEPHONE NO.:	EMAIL ADDRESS:		

	FOR ECMCC M/WBE USE ONLY	
	REVIEWED BY:	DATE:
	UTILIZATION PLAN APPROVED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ Contract No.: _____ Project No. (if applicable): _____ Contract Award Date: _____ Estimated Date of Completion: _____ Amount Obligated Under the Contract: _____ Description of Work: _____ NOTICE OF DEFICIENCY ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____ NOTICE OF ACCEPTANCE ISSUED: <input type="checkbox"/> YES <input type="checkbox"/> NO Date: _____	

**EXHIBIT B
RESPONDENT DATA**

To facilitate correct drawing and execution of a contract for services, respondents shall supply full information concerning legal status:

Firm Name: _____

Any trade name or assumed name ("d/b/a"): _____

Address of principal office:

Street: _____

City: _____ State: _____

Zip: _____ Phone: _____

Check one:

- CORPORATION
- LIMITED LIABILITY COMPANY
- PARTNERSHIP
- INDIVIDUAL

Formed under the laws of the state of: _____.

If a foreign entity, state whether authorized to do business in the State of New York:

- YES
- NO

Is respondent a New York State certified minority-owned or women-owned business enterprise listed in the online State Directory? (If so, please provide a copy of the NYS Certificate with proposal).

- YES
- NO

Address of Local Office:

Street: _____

City: _____ State: _____

Zip: _____ Phone: _____

Names and addresses of all directors and officers (or managers if an LLC):

Names and percentage ownership interest of all shareholders, partners, or members:

EXHIBIT C
NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this proposal, each respondent and each person signing on behalf of any respondent certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- 1) The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other respondent or with any competitor;
- 2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the respondent and will not knowingly be disclosed by the respondent prior to opening, directly or indirectly, to any other respondent or to any competitor; and
- 3) No attempt has been made or will be made by the respondent to induce any other person, partnership, limited liability company or corporation to submit or not to submit a proposal for the purpose of restricting competition.

NOTICE

(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

Affirmed under penalty of perjury this ____ day of _____, 20____.

Authorized Signature

Print Name and Title

EXHIBIT D
STATE FINANCE LAW §§ 139-J AND 139-K
DISCLOSURE, AFFIRMATION AND CERTIFICATION

I. Contractor Disclosure of Findings of Non-Responsibility and Prior Contract Terminations or Withholdings under State Finance Law §139-j:

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address: _____

Name and Title of Person Submitting this Form: _____

Contract Procurement Number: _____

Date: _____

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years? (Please circle):

No Yes

If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j? (Please circle):

No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Date of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: _____

Date of Termination or Withholding of Contract: _____

Basis of Termination or Withholding: _____

(Add additional pages as necessary)

Contractor certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____

Signature

Name: _____

Title: _____

II. Contractor Affirmation Relating to Procedures Governing Permissible Contacts:

Contractor affirms that it understands and agrees to comply with the procedures of Erie County Medical Center Corporation relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

Date: _____ By: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

EXHIBIT E NOT-FOR-PROFIT M/WBE BUDGET FORM



Any services that are self-performed by a not-for-profit respondent (i.e., services not procured in the open market) in response to this RFP, RFQ, or IFB, as well as any personal services, rent, and utilities costs related to this procurement, are exempt from the M/WBE goals that have been assigned to this procurement. After exempting personal services, rent, utilities and self-performance, M/WBE goals will still attach to the entire remainder of the funds of the procurement.

(For example, if the respondent's proposal for this procurement is \$100,000, and \$80,000 of this amount is comprised of personal services, rent, utilities and self-performance by the not-for-profit, then the remaining \$20,000 would still be subject to the M/WBE goals assigned to this procurement.)

This exception applies solely to not-for-profit respondents. Respondents who are for-profit organizations are still required to apply the M/WBE goals to the full amount of this procurement in their proposals. All parties are still responsible for submitting utilization plans (as detailed in Exhibits A and A-1) with their proposals that cover all services that are not exempt as described in the above.

The following chart is required to be submitted by all not-for-profit respondents. Each respondent must provide a breakdown of their entire proposed budget for the procurement. If you are not a not-for-profit entity, you do not have to complete this form.

Respondent name: _____

Proposed budget for work	
1 Personal services	\$ _____
2 Rent	\$ _____
3 Utilities	\$ _____
4 Self-performance	\$ _____
5 Other expenses <i>(Please provide line item descriptions; add additional sheets as necessary)</i>	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
6 Add the sum of Section 5. <i>(These funds <u>will</u> be subject to M/WBE requirements)</i>	\$ _____
7 Add the sum of Sections 1-4. <i>(These funds <u>will not</u> be subject to M/WBE requirements)</i>	\$ _____
Add the sum of sections 6 and 7. <i>(This number reflects the <u>total proposed budget</u> for the project.)</i>	\$ _____

RESPONDENT SIGNATURE

Signature of preparer

Date

Name of organization

Title of signatory
