



The Culture of Care

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## ERIE COUNTY MEDICAL CENTER CORPORATION

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### REQUEST FOR PROPOSALS

### ANESTHESIA ELECTRONIC MEDICAL RECORDS

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AUGUST 31, 2017

### RFP # 21711

The deadline for submission of proposals is **Monday, September 25, 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 # 21711

Due: September 25, 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 located at Section 3 of this RFP. Copies of questions and responses will be issued to all respondents as an Addendum to this RFP as set forth in the RFP Schedule.

**Designated contact:** Sarina M. Rohloff, RFP/IFB Coordinator ([Srohloff@ecmc.edu](mailto: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:	Thursday, August 31, 2017
Deadline for Questions:	Friday, September 8, 2017
Answers Issued by Addendum:	Monday, September 18, 2017
Proposals Due:	Monday, September 25, 2017
Contract Award:	TBD

4. SCOPE OF SERVICES/SPECIFICATIONS:

ECMCC is seeking proposals from qualified vendors to provide and implement an electronic anesthesia information management system (“AIMS”). The selected system would integrate with Meditech and devices utilized by Anesthesia, and allow an Anesthesiologist or CRNA to document medication administration in real-time, and include integration with vital sign monitoring devices. This would allow the entire surgical record to be electronic and would also assist with expediting professional charges being billed.

5. OBJECTIVES

**5.1 ANESTHESIA RECORD**

- Ensure stream-lined, complete, compliant documentation for the scope of the Anesthesia record.

**5.2 INTEGRATION WITH EXISTING SYSTEMS AND TECHNOLOGY**

- Ability to integrate with applications and devices within the ECMCC environment. This includes Meditech, peri optimum, Data Repository, Phillips monitoring devices, and Draeger Apollo Anesthesia machines.

6. FUNCTIONAL REQUIREMENTS

**6.1 ELECTRONIC ANESTHESIA DOCUMENTATION AND WORKFLOW**

The following items are required for the AIMS:

- Compatible with Medent for professional billing (future).
- Compatible with McKesson for professional billing (current). Batch report export to PDF based on date range, status.
- Concurrent documentation alerts for providers. Pop up alerts reminding staff to document start/stop times for breaks, etc., so professional billing process not impacted by concurrent coding.
- Dashboard reports that can be run for follow up for billing/coding process for completeness (ex. include charts still in draft, mandatory fields requiring).
- Analytics module support. Describe the dashboards available.
- Ability to require certain fields to be completed prior to a record being signed off to ensure necessary fields for anesthesia reimbursement or regulatory compliance:
  - Document anesthesia times (start and stop)

- Physical status - ASA
  - Doctor/CRNA/Resident on the case
  - Arterial line, Swan Ganz catheter or CVP line put in /placed
  - Date of service for case
  - Type of Anesthesia example GA, Epidural, MAC, Nerve Block, intubation done
  - Production of reports both operational and financial, e.g.: Anesthesia Log (case report for the day)
  - Surgeon on case
  - Procedure being performed
- Assist with medication charging and controlled substance reconciliation for pharmacy.
- PQRS Quality measure tracking/reporting.
- Ability to handle and maintain flexibility with MACRA/MIPS regulatory requirements. Describe the tools available to assist with managing compliance.
- Ability to batch export completed reports for a date range. For export to McKesson for professional billing.
- Ability to report and track what cases require follow up (Ex. What is in draft, what fields are missing, etc.?).
- Ability to build medication and documentation templates depending on the procedure.
- Co-signer requirement and attestation by attending if resident, CRNA starts documentation.
- Ability to handle out of order documentation. Ex. An Anesthesiologist begins a document in draft and later medications are administered in Meditech and vitals are taken. There needs to be an option for the user to integrate this information into his or her report. Ex. If nursing information can be interfaced, but nursing documentation hasn't started before the Anesthesiologist documentation, need the ability to interface, pull information after a template is started.
- Ability to update patients OR room # in application. Describe if this can interface back to Meditech (ex. room switches occur due to late arrivals, etc. Not updated in MT).
- Ability for a provider to see documents that are not complete in a sign queue.
- Ability for office staff to flag completed charts requiring reconciliation (Ex. ASA time incorrect between RN and CRNA - need to reconcile or finalized start/stop times need to be resolved for concurrent documentation).
- Ability to choose whether to integrate information in real-time or require some manual intervention. For example, ability to choose whether to bring in a patient's allergies or problems.
- Ability to handle out-of-OR procedures. Describe how your solution allows for use outside of the OR (Ex. Epidural in ICU, day before assessments).
- Ability to support add-on patients that are not scheduled for a case that day in the OR.
- Ability to recover from beginning documentation on an incorrect patient or the correct patient but wrong visit. Describe how to correctly identify the patient in your application. Can the documentation be moved to the correct patient? How will the application handle this if it is mid-way through the procedure?
- Supports image capture for CVP ultrasound guide and nerve blocks.
- Describe if there are any hard stops or if times can be reconciled for pre-op documentation being completed prior to intraoperative document started.
- Describe patient verification steps, including scanning a wristband or entering specific data.
- Ability for First Data Bank data base to be imbedded in application for medication and allergy classifications.
- Ability to function on a PC. Can we use PC vs tablet-concern about loss/damage unless attached to a cart?

- Ability to function and optimized for a tablet device. Describe support for various mobile operating systems and form factors.
- Ability to recover from temporary gaps in Wi-fi coverage.
- Ability to query the Meditech Data Repository or accept data extracts.
- Ability to query Anesthesia system database to incorporate information into our dashboards via data extracts or direct, view-only database connection (SQL).
- Support of simultaneous access for multiple providers in a patient's chart (ex. CRNA and Anesthesiologist).
- Separate testing and production environment. Describe your applications testing environment and migration to production procedures when changes are needed.
- Launch to Meditech/patient context from within your application for C/S 5.67 version.
- Ability to capture patient signature for consent process.
- Ability for nursing and pharmacy to easily see when the next dose of antibiotics would be due post-op from within Meditech (Anesthesia would be documenting in the Anesthesia application).

## 6.2 INTERFACE AND INTEGRATION

- Ability to customize information that pulls into the documentation from Meditech
- Interface to Meditech - Final Report as a PDF to Meditech
- Interface from Meditech – HL-7 Surgical Schedules
- Interface from Meditech – HL-7 ADT Information
- Interface from Omnicell – HL-7 medications pulled
- Interface from Meditech - Vitals and other elements from nursing documentation - Possibly from a Meditech Data Repository extract. Include problem list, home medications, allergies. Ability for user to choose not to include certain information.
- Ability to accept a pipe-delimited file (or similar format) to integrate SQL data extracts from the Meditech Data Repository. OR RN documented vital signs for pre-operative notes as well as last medications administered.
- Interface from Meditech - outbound reports
- Ability to continuously query and pull data from Phillips vital sign devices. Is it a middleware or direct connect? What additional tools and/or software are required. Describe the update process if ECMCC purchases new devices.
- Ability to continuously query and pull data from Draeger Apollo Anesthesia devices (including ventilation parameters and EKG information). Is it a middleware or direct connect? What additional tools and/or software are required. Describe the update process if ECMCC purchases new devices.

## 7. SECURITY

- Describe your approach to data/information security, especially with regards to Internet technologies. Describe how it adheres to industry best practices.
- **If your solution is cloud-based, please respond to the following:**
  - **Business Associates Agreement**
    - If PHI is involved
  - **Service Organization Control (SOC) 2 Type 2 – Annual report**
    - **Report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy**

- A type 2, report on management’s description of a service organization’s system and the suitability of the design and operating effectiveness of controls
- **Full indemnification for security failure impact**
  - Contract outlines that if there is a security breach experienced by the Cloud Service Provider, Downstream Vendor or one of their downstream subcontractors that the cloud service provider would be responsible for losses experienced by ECMCC
- **Cyberliability Insurance**
  - Cloud Service Provider has current cyberliability insurance
  - Liability amount must be commensurate with data being protected
- **Data Deletion Certificate or Verification**
  - Proof that data is deleted when service/contract expires
- **Data Returned Upon Completion of Contract**
  - Will data be returned to ECMCC?
  - If yes, how will it be returned?
- **Encryption**
  - Data at rest
  - Data in motion
  - Data in use
- **Internal Security Controls<sup>1</sup>**
  - Authentication Methods
    - Multi-Factor Authentication
    - Provisioning and Termination processes exist
    - Employee background checks
- **Data**
  - What type of data is utilized (i.e. Clinical, Patient Financial, Research, Finance, Business, Finance, and Employee Data) and is the vendor meeting the industry standards for that type of data?
  - Secure Transport
  - Secure Storage
  - Secure Disposal
- **Services Provided on Type of Data**
  - Services based on Medical/Clinical Data
  - Services based on Finance / Revenue Cycle
  - Services based on Business
- **Downstream Subcontractors Management**
  - Verify Vendor Downstream Subcontractors of the Cloud Service Provider meet all defined:
    - SLAs
    - Availability Requirements
    - Security Requirements

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<sup>1</sup> A SOC report would normally cover the Internal Security Controls section.

- If PHI data is involved, BAA exists between Cloud Service Providers or Downstream Vendors and their Downstream Subcontractors
  - BAA if appropriate
- **Liability**
  - Does the vendor have cyber liability insurance coverage?
  - Are the liability limits for cyber liability coverage and other appropriate for the items defined above or the impact to the business if there is a catastrophe failure
- **Right to Audit**
  - The ability to audit at a minimum once annually
- **Compliance**
  - Where appropriate (varies depending on the data and services provided), commits to be compliant to and providing evidence of such compliance to:
    - NYS Regulations
    - Federal Regulations
- Describe the software authentication process. Include the process for format of the user id and password (i.e. length and special characters). Describe how the authentication process for the software syncs up with Active Directory.
- Does the system have functionality to accommodate multiple users on a common workstation with easy log-off/log-on capabilities?
- Will your product work with Imprivata Single Sign-On?
- Describe how system access can be configured to limit user access to patient records and functionality based on their role in the organization (i.e., role-based access).
- Describe the system log activity to provide a complete audit trail to track disclosures of the specific user, patient, functions accessed, date/time and data change. Are record accesses and edits easily reportable by patient and employee? Include examples of standard reports. Include the timeframe that the activity logs are saved on the system.
- a. Describe how all records or files accessed and the actions taken during the users or administrators session are logged or documented.
- b. Define how all log entries have date and time stamps.
- c. Do the log entries identify the device (i.e. workstation name, IP Address or other identifier) the action was initiated from by the user?
- Describe the system functions that will automatically log off or session lock users? How is this function controlled?
- Does the application mark encounters as closed/completed to prevent further changes?
- Describe how your software complies with HIPAA, MACRA/MIPS, and ARRA.
- Describe how the data, files or databases utilized by the application are encrypted. Include the encryption algorithm or tool utilized.
- Describe how the communications between the software applications (i.e. workstation, mobile device, application server, application database server, or middleware server) are secured and encrypted. Detail how man-in-the-middle attacks are remediated.

## 8. TECHNICAL

- Provide a high-level overview of your system's conceptual data flow and components as it would operate in the ECMCC environment.

- If a cloud hosted option is available, how does the user experience differ from an ECMCC hosted solution? Describe the maintenance tasks for both solutions.
- Describe a baseline for your system's response time for an end user logging in, documenting within the application, switching screens, etc.
- Describe the capability for limited functionality for dedicated tablets if the device loses connectivity.
- Describe the capability for limited functionality for vital signs/continuous monitoring, medication administration, and documentation if the device loses connectivity.
- Describe downtime strategy for anesthesia documentation, etc. How will the system recover from an extended amount of downtime (ex. Greater than 2 hours)?
- List all types of integrations you support
- Please list all software components provided by 3rd parties other than the operating system and utilities such as PCAnywhere.
- For any listed above in subsection iii, is this 3rd party software installed, maintained, and supported by you?
- Define the provider remote access capabilities of your system, including view-only vs. full function. Describe the recommended hardware and software, network bandwidth and network latency necessary to support this access.
- If a VPN connection is necessary in subsection v above, please indicate compatibility with Cisco's ASA series of security appliances. Otherwise, describe in detail the method of secure remote access.
- Describe any specific network firewall configuration requirements.
- Does your system support a virtualized infrastructure (servers and desktops)?
- Does your system support the use of remote desktop (RDP)?
- Describe the databases your system supports (SQL, Oracle, etc.). Also describe if the database for your solution can be clustered.
- List any subcontractors or partners that you employ or that must be employed by ECMCC. Designate if this entity is just for implementation or is needed for on-going support.
- Describe your applications testing environment and migration to production procedures when changes are needed. Describe differences between cloud-based and self-hosted solutions.
- Provide a recommended hardware configuration that will meet the needs for production, testing, and training environment databases. Include the hardware and software requirements for automatic fail over. Please indicate your approved storage vendors. ECMCC will consider storage solutions from NetApp and EMC.
- All servers and PCs must run the latest or near-latest version of the Symantec Antivirus client with real-time protection enabled. Please describe your requirements or limitations for real-time A-V protection.
- Does the system track preventative maintenance on equipment?
- How many major and minor application software updates are released per year?
  - How often is software updated to reflect changes in regulatory issues?
  - Who installs/tests these updates?
  - Are they installed/tested on a test system first?
  - Does the system have to be off-line to apply these updates? If so, for how long?
  - How many major and minor PC client software updates are released per year?
  - How are these client updates distributed?
  - Do all clients have to be on the exact version of the client?
    - Can the clients be upgraded over several days?
  - What is the length of time the system will be down during the year for planned updates?

- Is there any additional software required to be on the client? If so, include list.
- Identify the minimum desktop, tablet, smart phone, and PDA configuration requirements.
- Identify the web technology and configuration minimum requirements if the application is web-based.
- Microsoft releases monthly security related software updates. It is desirable to install these updates as soon as they are available. Please describe your requirements and recommendations for updating both the system servers and the PC clients. Do you validate the operation of your system before giving customers the authorization to install these Microsoft updates?
- Please list all application maintenance that is run on a regular basis. Is the system down during this maintenance? An example is a periodic utility that is run to check the integrity of the database or compress the database.
- ECMCC requires that the response speed of the application be instantaneous or near-instantaneous as far as the typical user point of view is concerned. Longer background reports should be engineered to finish in a timely manner. Reports should take minutes or tenths of minutes, not hours. This performance must be guaranteed for a period of 5-years using the initial vendor specified hardware and ECMCC's real-world network. Five years from now, the database will house a substantial amount of data and the system should not slow down by more than 10% because of this. The initial hardware should be robust enough so as to not have to be upgraded or replaced during this 5-year period. Please describe how you will guarantee and ensure continued application performance.
- The hard drive space should be sized to hold all data for a 5-year period. Please calculate the drive space needed based on the number of clinics, doctors, visits, modules purchased, and interface. What is the storage needed for each of the servers? Describe in detail your recommended storage environment/system.
- ECMCC will work with the vendor to develop a complete hardware, software, network specification which will be approved by the vendor before any purchase orders are processed.
- ECMCC will provide rack space in the Data Center, IP-KVM, 1000 MB/S network connections, 208 and 117 volt UPS/generator protected power, A/C, physical security, backup software, anti-virus software, and VPNs needed for remote support.
- The ECMCC racks are 6'5" high and have the standard 19" rails, and are 42" deep. Each rack is designed to house 16 rack-mount 2U servers. If you intend to supply a turnkey rack system it must be less than 6'5" high.
- ECMCC can provide the servers, operating system, database software, system utilities. Please indicate who provides these items.
- Servers must be part of the ECMCC Microsoft Active Directory Domain. Vendor
- UID/passwords will be managed by this domain. Vendor will not have passwords known only to them.
- Define the required bandwidth of our network to guarantee ensured application performance.
- Describe the backup scheme for each of the system servers. Does the system need to be down at any time for the backup? ECMCC will use EMC's Networker backup software with any appropriate agents. Please list the agents needed such as agents for Microsoft's SQL Server, open file agents, etc.
- Please describe the procedure for recovering from an IT disaster where it is necessary to reload the system from backup tapes on new hardware. Do you supply a written disaster recovery procedure? Is disaster recovery assistance covered under the maintenance contract?
- All applications have a "life cycle" and it is possible that at some point in the future ECMCC will transition to a different eMAR/eRX system. At this point it will be necessary

to move the data from this system to the new application. It will not be feasible to keep the legacy system running for accessing old data. Please describe in general the method of moving data from the proposed application to a future application. Can ECMCC do this or does it require a custom engagement with you? Does this require special vendor specific software such as database conversion or reformatting tools? ECMCC requires that this end of life conversion plan is part of the initial proposal.

- Can the system be configured to support improved fault tolerance and system recovery (e.g., mirrored disk drives/servers)? What are the clustering capabilities of your system? Describe your process to ensure system high availability.
- Is your proposed product web based or client/server? Is the client software a thin or thick client? Disclose your products development roadmap and lifecycle for the next three years.
- Please provide a copy of your quality assurance guidelines for testing new software releases.

## 9. ADMINISTRATIVE REQUIREMENTS

- Complete Drug Database (updated Monthly)
- Provide detailed description of all standard content reports as well as any customizable reports.

## 10. SYSTEM SUPPORT

- What are your normal support hours (specify time zone)? Where is support staff located?
- Which of the following support features are available?
  - Toll-free hotline
  - Remote monitoring
  - Remote diagnostics
  - Training tutorials
  - Web based support tracking
- Do you offer 24x7 software and hardware support?
- What is the response time for problems reported: 1) during regular business hours and 2) off hours?
- Describe your support process for evaluating and fixing “bugs” or problems in your software. How would you coordinate problem analysis and resolution with our HCIS vendor and other third party products?
- Describe any regularly held seminars or user group meetings available to users of your system. Are enhancements based on input from user group meetings? How are enhancement priorities determined?
- Do you have advisory groups? What is their role? What is their membership?
- Please provide a guideline for the type of internal support that will be required, for both the number of information systems personnel, by classification, and also non-information systems personnel (i.e., department-based). Please describe their roles and responsibilities.
- What is the range and average for system downtime (scheduled and unscheduled) for you clients’ systems?
- Do you provide regulatory and evidence base updates? How often? List all specialties.
- Define your process for managing service updates and releases? Do you perform them after hours?
- Define the internal resources required to continue the support and maintenance of your application.

## 11. PROPOSAL REQUIREMENTS:

- 11.1 Proposals must include the following information:
  - 11.1.1 Detailed plan outlining how your company will meet all of the deliverables described in the Section 4 (Scope of Services/Specifications).
  - 11.1.2 Company profile including organizational chart indicating persons who will be assigned to work with ECMCC and resumes
  - 11.1.3 Length of time respondent has been in business.
  - 11.1.4 Detailed fee schedule and all fees incurred for the deliverables included in this RFP.
  - 11.1.5 Three (3) references of facilities similar in size to ECMCC that may be contacted by ECMCC to discuss respondent's services.
  - 11.1.6 Disclose whether respondent has ever had a contract terminated and if so, provide a detailed explanation of the contract and circumstances surrounding termination.
  - 11.1.7 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.
  - 11.1.8 Disclose any other areas that may be a potential conflict of interest.
  - 11.1.9 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.
- 11.2 The following forms must be submitted with each proposal:
  - 11.2.1 M/WBE Utilization Plan - Form MWBE 100 (Exhibit A-1) (see Section 7 below).
  - 11.2.2 Respondent Data Form (Exhibit B).
  - 11.2.3 Non-Collusive Bidding Certification (Exhibit C).
  - 11.2.4 Disclosure, Affirmation and Certification in accordance with State Finance Law §§ 139-j and 139-k (Exhibit D).
  - 11.2.5 Not-for-profit budget form (Exhibit E) (note this form is only required if the respondent is a not-for-profit corporation).
  - 11.2.6 Diversity Practices Questionnaire (Exhibit F) (see Section 7 below)

12. EVALUATION CRITERIA:

Documentation of all necessary quality measures for Anesthesia and ability to choose hard stops for: <ul style="list-style-type: none"> <li>• Document anesthesia times – start and stop</li> <li>• Physical status - ASA</li> <li>• Doctor/CRNA/Resident on the case</li> <li>• Arterial line, Swan Ganz catheter or CVP line put in /placed</li> <li>• Date of service for case</li> <li>• Type of Anesthesia example GA, Epidural, MAC, Nerve Block, intubation done</li> <li>• Production of reports both operational and financial, e.g.: Anesthesia Log (case report for the day)</li> <li>• Surgeon on case</li> <li>• Procedure being performed</li> </ul>	6 points
Concurrent documentation warnings, hard stops, or other workflow to assist with billing inconsistencies.	5 points
Image capture directly within the application.	5 points
Ability to handle out of order documentation. (Ex. An Anesthesiologist begins a document in draft and later medications are administered in Meditech and vitals are taken. There needs to be an option for the user to integrate this information into his or her report).	3 points
Ability to utilize multiple templates, medication order groupings based on defined procedures.	2 points
Ability to flag charts for reconciliation whether in draft or signed off and have appropriate workflow to reconcile errors.	2 points
Ability to capture patient’s consent and signature via application for both patient and Anesthesiologist.	2 points
Admission Discharge and Transfer interface with Meditech to avoid manual data entry upon admission/edits.	6 points
Continuous interface with Phillips Cardiac Monitoring devices (vital signs).	6 points
Continuous interface with Anesthesia Machine – Draeger Apollo (vent settings).	5 points
OR schedule interface with Meditech.	3 points

Ability to query Meditech’s data repository SQL database to integrate problem list, home medications, allergies, last medications administered, and last vital signs taken. Ability for end user to choose whether to incorporate all, some, or none of the information.	2 points
Integration with McKesson and Medent for professional billing. Batch download of completed reports or direct interface.	2 points
60 Months Pricing Licensing <ul style="list-style-type: none"> <li>• Site License</li> <li>• Per Seat Concurrent Users/Viewers</li> </ul> Yearly Maintenance	6 points
Training <ul style="list-style-type: none"> <li>• Train the Trainer</li> <li>• End User Training</li> </ul>	5 points
Hardware <ul style="list-style-type: none"> <li>• Initial Cost</li> <li>• Maintenance</li> </ul>	4 points
3 <sup>rd</sup> Party Applications <ul style="list-style-type: none"> <li>• Cost</li> <li>• Hardware/Software Required</li> <li>• Professional Services Required</li> </ul>	2 points
Downtime system Strategy	4 points
Ability to function on multiple types of tablets, PCs, phone devices and operating systems.	6 points
Capability to meet all ECMC technical specifications	6 points
Security <ul style="list-style-type: none"> <li>• Authentication process</li> <li>• Role-based access</li> <li>• Audit capability</li> <li>• Compliance with HIPAA, MACRA, and ARRA regulations</li> </ul> Cloud-based security requirements	4 points
System support; Available support features <ul style="list-style-type: none"> <li>• 24x7 support</li> <li>• Remote monitoring</li> <li>• Remote diagnostics</li> <li>• Toll-Free Hotline</li> <li>• Training Tutorials</li> <li>• Response Time for reported problems on/off hours</li> </ul>	8 points

Diversity Studies (Exhibit F)	5 points
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13. M/WBE REQUIREMENTS AND DIVERSITY PRACTICES:

- 13.1 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.
- 13.2 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.
- 13.3 M/WBE Respondents. In the event that a respondent is a certified M/WBE, the respondent must nevertheless utilize at least one other MBE or WBE firm to satisfy the total M/WBE 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.
- 13.3 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.
- 13.4 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 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 in this contract.)*

This exception applies solely to not-for-profit respondents. For the purposes of calculating which funds shall still be subject to M/WBE 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 M/WBE 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.

- 13.5 Diversity practices Diversity practices are the efforts of contractors to include New York State-certified M/WBE's in their business practices. Diversity practices may include past, present, or future actions and policies, and include activities of contractors on contracts with private entities and governmental units other than the State of New York. Assessing the diversity practices of contractors enables contractors to engage in meaningful, capacity-building collaborations with MWBEs.

Pursuant to New York State Executive Law Article 15-A, ECMCC has determined that the assessment of the diversity practices of respondents to this procurement is practical, feasible, and appropriate. Accordingly, respondents to this procurement are required to fill out and return the questionnaire attached to this RFP as Exhibit F as part of their response. This questionnaire is intended to determine the overall diversity practices of respondents, regardless of specific M/WBE participation in this procurement.

#### 14. GENERAL INSTRUCTIONS TO RESPONDENTS:

- 14.1 **By submitting a response, respondents agree to both the terms of this RFP as well as ECMCC's standard terms and conditions attached to this RFP as Appendix A.**
- 14.2 **Insurance** in the amounts designated in the attached Appendix B 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.
- 14.3 **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.
- 14.4 **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.

- 14.5 **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 proposal.
- 14.6 **Failure to perform** or meet delivery schedules as per the accepted proposal may result in legal action by ECMCC to recover damages.
- 14.7 **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.
- 14.8 **Any cash discount** which is part of a proposal will be considered as a reduction in price in determining the award of the proposal.
- 14.9 **ECMCC may, as the need arises, 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.
- 14.10 **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.
- 14.11 **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.
- 14.12 **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.
- 14.13 **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.
- 14.14 **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.

- 14.15 **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.
- 14.16 **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 0% for Minority and Women-Owned Business Enterprises ("MWBE").
- 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, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

## EXHIBIT A

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.

### D. Workforce Employment Utilization Report ("Workforce Report")

## EXHIBIT A

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

## EXHIBIT A

- 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 10<sup>th</sup> 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 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**

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Signature of preparer

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Date

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Name of organization

---

Title of signatory

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**EXHIBIT F**

Sales Workers															
Administrative Support Workers															
Craft Workers															
Operatives															
Laborers and Helpers															
Service Workers															
Total															

**II. Firm activity**

3. Does your Company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **(Potential Points – 10 Points)**

Yes                       No

If yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

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4. Is your Company’s CEO and/or Chief Procurement Officer (“CPO”) committed to and engaged in the process of diversity business development? **(Potential Points – 10 Points)**

Yes                       No

If yes, please attach a signed statement from your CEO or CPO.

5. Please attach a copy of your Company’s equal opportunity and affirmative action policy. **(Potential Points – 5 Points)**

**III. M/WBE business activity**

6. What percentage of your Company’s gross revenues were paid to New York State certified M/WBE subcontractors for servicing clients and/or manufacturing products and/or performing on contracts in your Company’s prior year of business activity? **(Potential Points – 5 Points)**

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7. What percentage of your Company’s gross revenues involved the use of joint ventures, partnerships, or other similar arrangements with New York State certified M/WBE’s in your Company’s prior year of business activity? **(Potential Points – 5 Points)**

EXHIBIT F

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8. What percentage of your Company's gross revenues were paid to New York State certified M/WBE subcontractors and paid to certified M/WBE joint ventures, partnerships, or other similar arrangements? **(Potential Points – 5 Points)**

- 
9. What percentage of your Company's gross revenues involved the use of government or private sector contracts that had New York State certified M/WBE utilization requirements? **(Potential Points – 5 Points)**

- 
10. What percentage of your Company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your Company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified M/WBE's as suppliers/contractors?<sup>1</sup> **(Potential Points – 5 Points)**

- 
11. Does your Company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? **(Potential Points – 5 Points)**

Yes                       No

If yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

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12. Is your Company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? **(Potential Points – 5 Points)**

Yes                       No

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<sup>1</sup> Do not include onsite project overhead.

<sup>2</sup> Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.

EXHIBIT F

If yes, identify the governmental mentoring program in which your Company participates and provide evidence demonstrating the extent of your Company's commitment to the governmental mentoring program.

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13. Does your Company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? **(Potential Points – 10 Points)**

Yes                       No

If yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

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14. Does your Company have a formal minority- and women-owned business enterprise supplier diversity program? **(Potential Points – 5 Points)**

Yes                       No

If yes, provide documentation of program activities and a copy of policy or program materials.

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15. Does your Company provide any financial assistance to New York State certified M/WBE's? **(Potential Points – 5 Points)**

Yes                       No

If yes, describe and attach details of any such programs as an exhibit.

EXHIBIT F

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16. Does your Company have set supplier and subcontractor diversity goals for your Company's procurements? **(Potential Points – 5 Points)**

- Yes                       No

If yes, please describe.

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17. Does your Company have established goals for New York State certified M/WBE suppliers or a total purchasing budget allocated to New York State certified M/WBE suppliers? **(Potential Points – 5 Points)**

- Yes                       No

If yes, please provide a copy or policy or statement of such established goals.

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18. Is your Company certified as a Minority and/or Woman-owned business enterprise with the New York State Department of Economic Development ("MWBE")? **(Potential Points – 5 Points)**

- Yes                       No

If yes, please provide a copy of your certification. If no, please list all other jurisdictions and/or certifying bodies that have deemed your company Minority and/or Woman-owned. Also, please provide a copy of each certification.

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EXHIBIT F

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If your company has applied for, but has not, as of the issuance of the RFP, been certified as a Minority or Women-owned business enterprise by the New York State Department of Economic Development, you must submit proof of a pending application, including the filing date.

19. Please provide any other information that demonstrates your Company's commitment to diversity practices.

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All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of \_\_\_\_\_  
 Owner/Official  
 Printed Name of \_\_\_\_\_  
 Signatory

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

\_\_\_\_\_  
 Notary Public

## Appendix A

### REQUIRED TERMS AND CONDITIONS FOR ALL CONTRACTS WITH ERIE COUNTY MEDICAL CENTER CORPORATION

1. **AGREEMENT.** By contracting with ECMCC for Services or Products (as herein defined), or by commencement of any Services or shipment of any Products or otherwise contracting with Erie County Medical Center Corporation ("ECMCC"), the contractor, licensor, licensee, lessor, lessee, or any other party to an agreement with ECMCC (the "Contractor"), hereby consents to these terms and conditions (collectively, the "Agreement"). ECMCC is not bound by, and expressly objects to, any terms or conditions (including, but not limited to, any contained in Contractor's quote or sales order acknowledgement) that conflict with those contained within this Agreement unless ECMCC expressly agrees to such terms or conditions in writing. In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Agreement, the terms of this Agreement shall control.

Any respondents to an ECMCC-issued request for proposals or bidders to an ECMCC-issued invitation to bid further agree to comply with the terms and conditions of this Agreement and incorporate these terms and conditions into any final agreement with ECMCC prior to commencement of Services or shipment of Products.

2. **NON-ASSIGNMENT.** Pursuant to Section 109 of the General Municipal Law, Contractor may not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or Contractor's right, title, or interest in this Agreement, or Contractor's power to execute this Agreement, to any other person or corporation without ECMCC's prior written consent. In the event that Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement, or Contractor's right, title or interest herein, or his power to execute this Agreement, to any other person or corporation without ECMCC's prior written consent as required by law, ECMCC shall revoke and annul this Agreement, and ECMCC shall be relieved and discharged from any and all liability and obligations arising out of this Agreement to Contractor and to the person or corporation to which this Agreement shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and Contractor, and his assignees, transferees or sublessees shall forfeit and lose all moneys, theretofore earned under this Agreement, except so much as may be required to pay Contractor's employees. The provisions of this section shall not hinder, prevent, or affect an assignment by Contractor for the benefit of his creditors made pursuant to New York State law.

3. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, age, disability, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if the Contract is for the construction, alteration, and/or repair of any public building and/or public work and/or for the manufacture, sale, and/or distribution of materials, equipment, and/or supplies, and to the extent that the Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; and/or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract.

4. **WAGE AND HOUR REQUIREMENTS.** If this Agreement is a "public work contract" covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Department of Labor (the "DOL"). Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the DOL in accordance with the Labor Law. Additionally, if this is a public work contract covered by Article 8 of the Labor Law, Contractor understands and agrees that the filing of

payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by ECMCC of any ECMCC-approved sums due and owing for work performed.

5. **WORKERS' COMPENSATION BENEFITS.** This Agreement shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

6. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge and agree that Contractor is an independent contractor of ECMCC, and that this Agreement does not create an employment relationship between ECMCC and Contractor or between ECMCC and any person performing Services or by or on behalf of Contractor. None of the provisions of this Agreement shall be construed or be deemed to create a relationship of agency, partnership, joint venture, ownership, control or employment between the parties other than that of independent parties contracting solely for the purpose of effectuating this Agreement.

7. **DELIVERY OF PRODUCTS.** Products to be delivered by Contractor to ECMCC shall be made FOB destination, prepaid and invoiced.

8. **CREDENTIALING.**

8.1. General. Contractor must comply with ECMCC's vendor credentialing requirements in order for its employees and subcontractors to be granted access to their respective facilities. All costs associated with Contractor's compliance with the vendor credentialing requirements will be borne solely by Contractor.

8.2 Employee or Subcontractor not Normally at ECMCC. For any employee and subcontractor of Contractor not normally conducting business at ECMCC's facilities, in the event the employee or subcontractor is on either respective campuses, ECMCC may permit such employee or subcontractor not to be credentialed in accordance with this Section so long as he or she is escorted by an employee of ECMCC in patient care areas at all times.

8.3 Signature Requirement. At ECMCC's facilities, each of Contractor's employees and subcontractors will be required to sign a document indicating that he or she has complied with the terms of subsection (c) above and will be given a badge which he or she must wear on full display at all times when at the facility and be returned upon departure from the facility.

8.4 Removal of Employee or Subcontractor. During the term of this Agreement, ECMCC may immediately remove any of Contractor's employees or subcontractors from any of ECMCC's facilities, if ECMCC believes, in its sole discretion, that such employee or subcontractor may (i) pose a risk to the health, safety or medical condition of any employee, patient or patron of ECMCC or (ii) interfere with the business or operations of ECMCC. In the event ECMCC removes any of Contractor's employees or subcontractors in accordance with the preceding sentence, ECMCC may request a meeting with Contractor to discuss (A) the basis for ECMCC's determination to remove the employee or subcontractor and (B) whether ECMCC will re-grant the employee or subcontractor access to ECMCC's facilities or will permanently bar the employee or subcontractor from access to ECMCC's facilities (which ECMCC will determine in its sole discretion).

8.5 Audit. During the term of this Agreement, Contractor will be subject to audit(s) to ensure its compliance with the credentialing requirements contained in this Agreement. Upon Contractor's failure to comply with any of these requirements, ECMCC may (i) terminate this Agreement or (ii) require Contractor to comply with more stringent credentialing requirements.

9. **SET-OFF RIGHTS.** ECMCC shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the option to withhold for the purposes of set-off any moneys due to the Contractor under the Contract up to any amounts owing to ECMCC which

are past due, with regard to the Contract, any other contract with ECMCC.

10. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of New York. Each of the parties to this Agreement consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the County of Erie, New York.

11. **ARBITRATION.** Disputes under \$100,000 involving this Contract, including the breach or alleged breach thereof, must be submitted to a single arbitrator to be chosen by ECMCC.

12. **INDEMNIFICATION.** Contractor shall be responsible, without limitation, for any liabilities, losses, claims, damages, suits, and expenses whatsoever, including costs of enforcement and reasonable attorney's fees, caused to ECMCC, and to indemnify ECMCC for claims of third parties asserted against ECMCC, to the extent attributable to or caused by the negligence, willful misconduct, product liability, breach of contract or warranty of Contractor, or an allegation that arises from services provided by Contractor, whether individually or in combination with any other work, infringes upon, violates, or misappropriates any third party's patent, trademark, copyright, proprietary, and/or any other intellectual property rights.

13. **INSURANCE.** Contractor shall obtain and maintain, at its expense, adequate (as determined by ECMCC) insurance in the amounts as set forth in Appendix B.

14. **COMPLIANCE.** While on ECMCC property, Contractor shall abide by all applicable ECMCC rules, regulations, policies and procedures that are posted on ECMCC property or otherwise made known to Contractor. Contractor shall comply with all applicable requirements of the Joint Commission on Accreditation of Healthcare Organizations when providing services to ECMCC. Where Contractor will be performing services within the Clinical or Patient Areas of ECMCC, Contractor shall provide the following to ECMCC: (i) proof of current immunizations; (ii) verification of credentials (if applicable); (iii) a copy of the current job description; and (iv) a copy of its annual employment evaluation (if applicable).

15. **COMPLIANCE WITH HEALTH LAWS.** Contractor must comply with all applicable laws, rules or regulations, including, but not limited to, 42 U.S.C. 1395nn, and the regulations promulgated thereunder (the "Stark Law"), 42 U.S.C 1320a-7b, and regulations promulgated thereunder (the "Anti-kickback Law"), and the Health Insurance Portability and Accountability Act and its regulations ("HIPAA"). If Protected Health Information, as defined by HIPAA, is exchanged between the parties, and Contractor is not a Covered Entity as defined by HIPAA, Contractor agrees simultaneous with any agreement to also enter into ECMCC's standard business associate agreement.

16. **CONFIDENTIALITY.** The parties acknowledge and agree that the existence of this Agreement, and its terms and conditions are strictly confidential. The parties agree that the terms of this Agreement and any negotiations may not be disclosed, in whole or in part, to any third party, except to each party's attorneys and professional advisors who have a need to know, provided that such attorneys and advisors also agree to be bound by this confidentiality and non-disclosure provision. Notwithstanding the foregoing, the terms, conditions, and negotiations may be disclosed (i) pursuant to a judicial subpoena or proper regulatory request for information from a governmental entity with authority over the affairs of any of the parties to the agreement, (ii) when requested pursuant to Freedom of Information Law requests, provided such terms are not protected from disclosure by the New York Public Officers Law, and (iii) to the extent reasonably required by any party to perform, compel performance, or enforce any provision of the agreement.

17. **TRAVEL EXPENSE REIMBURSEMENT.** Contractor expenses must be approved by ECMCC in advance and will be reimbursed at actual costs. Reimbursement for actual costs for meals and incidental expenses may not exceed the per diem amounts for Buffalo, New York at set by the current GSA schedule ("GSA Limits"). Air travel expenses may include only coach air fare; no charges for seat upgrades or seat preferences will be reimbursed. Overnight accommodations will be direct billed to ECMCC. If accommodations are not available at a hotel that has a direct bill arrangement with ECMCC,

then hotel rates not to exceed GSA Limits for Buffalo, New York will be reimbursed. Receipts for any costs to be reimbursed must be submitted within 30 days of the month incurred.

18. **TERMINATION.** The Agreement shall be subject to termination at the election of ECMCC upon 30 days prior written notice. Upon such termination, ECMCC shall pay to Contractor all compensation earned up to the date of termination in accordance with the compensation fees listed in the Agreement. Other than as set forth in the Agreement and except in the event of a breach of this Appendix A or any provisions of the Agreement, upon the effective date of any termination by either party, the parties shall have no further obligations to each other.

19. **EQUAL EMPLOYMENT OPPORTUNITIES.**

19.1 Contractor and its subcontractors shall undertake or continue 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, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

19.2 Prior to the award of a contract, the Contractor shall submit an equal employment opportunity ("EEO") policy statement to ECMCC.

19.3 As a part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding Agreement, shall agree to the following in the performance of the Agreement:

- (i) Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action 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, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on the Agreement.
- (ii) Contractor shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status;
- (iii) At the request of ECMCC, 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, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

20. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND SERVICE-DISABLED VETERAN-OWNED BUSINESSES.** Contractor agrees to comply with New York State Executive Law Articles 15-A and 17 and 5 NYCRR Parts 142-144 and 9 NYCRR 252 ("MWBE and SDVOB Laws"), if applicable. Also when applicable, Contractor must provide and comply with M/WBE and SDVOB Utilization Plans which have been approved by ECMCC's Office of M/WBE Compliance. In the event that Contractor willfully and intentionally fails to comply with the M/WBE and SDVOB Laws and/or the MWBE and SDVOB Utilization Plans, Contractor shall be obligated to pay liquidated damages, calculated as an amount equaling the difference between: (i) all sums identified for payment to MWBEs or SDVOBs had Contractor achieved the MWBE or SDVOB goals; and (ii) all sums actually paid to MWBEs or SDVOBs for work performed or materials supplied under this Agreement. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

21. **WORKFORCE REPORTING.** Per New York Executive Law and Executive Order Number 162, Contractor and any of its subcontractors shall submit a quarterly Workforce Employment Utilization Report reflecting the entirety of Contractor and its subcontractors' workforces performing work on this Agreement and located within New York State, as well as the salaries of any such employees.

22. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to ECMCC a non-collusive bidding certification on Contractor's behalf.

23. **PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

24. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as ECMCC and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. ECMCC shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate ECMCC official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, ECMCC's or the State's right to discovery in any pending or future litigation.

25. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify ECMCC, in writing, of each and every change of address to which service of process can be made. Service by ECMCC to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond. A copy of all notices to ECMCC shall be provided to: Office of General Counsel, Erie County Medical Center Corporation, 462 Grider Street, Buffalo, New York 14215.

26. **TAXES.** Bills and proposals to ECMCC shall not include charges for any Federal, State or local excise, sales, transportation or other tax, unless Federal or State law specifically levies such tax on purchases made by ECMCC. ECMCC's purchase order serves as required evidence of its exempt status. Any applicable taxes from which ECMCC is not exempt shall be listed separately as cost elements and added into the total net price.

## Appendix B

### INSURANCE REQUIREMENTS

1. **Insurance to be Maintained By Contractor.** Prior to providing services under this Agreement, Contractor, at its own cost and expense, shall procure and maintain insurance for the coverages listed below, written for not less than the limits specified for each coverage or required by law, whichever is greater (except that if Contractor procures any policy limits greater than the amounts required herein, then the higher limits shall apply as though stated and required herein) and including the provisions enumerated below:

1.1 Professional Liability

Occurrence coverage	\$1,300,000 per occurrence
General Aggregate	\$3,900,000

Professional liability insurance coverage shall provide "occurrence" coverage; provided however if such coverage is "claims made" coverage, it must include tail coverage for at least two and one-half (2 ½) years after this Agreement terminates or expires.

1.2. Commercial General Liability

Bodily Injury and Property Damage Limit	\$1,000,000 each occurrence
Personal Injury Limit	\$1,000,000 each person
General Aggregate	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000

Coverage is to apply on an occurrence basis only. No endorsement or modification of this policy limiting the scope of coverage for Contractual Liability, Products/Completed Operations, Pollution or Personal Injury shall be permitted. In addition, no designated Premises/Operations limitation shall be permitted.

1.3. Automobile Liability

Owned, Hired and Non-Owned Autos

Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000 each accident
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1.4. Workers' Compensation & Employers' Liability and New York Disability Benefits

Statutory coverage complying with the law of each state in which Contractor's employees are headquartered, working, or domiciled with Employers' Liability limits of not less than \$1,000,000 Each Accident and \$1,000,000 Each Employee for Disease and \$1,000,000 Policy Limit for Disease, or the minimum level required by Contractor's Excess Umbrella Liability insurance company, whichever is greater and New York Disability Benefits Law.

1.5. Cyber Liability

Any contract awarded where electronic information/data, including Protected Health Information (as defined under HIPAA) is being exchanged between ECMCC and the Contractor or stored by Contractor on behalf of ECMCC will require cyber liability insurance as described below. In addition to the insurance below, the Contractor/Vendor must demonstrate use of a secure server and password-protected email. In some circumstances coverage to include Internet Media Liability and/or Cyber Extortion Coverage, including Regulatory Proceeding and Breach Costs

Cyber Liability Insurance Limits	\$5,000,000 per claim
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1.6 Umbrella or Excess Follow Form

Combined Single Limit for Bodily Injury and Property Damage	\$5,000,000 each occurrence \$5,000,000 aggregate
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Coverage is to apply on an occurrence basis only; in excess of the other Liability coverages required in 1.1, 1.2, 1.3, 1.4 and 1.5 above and shall be no more restrictive than such scheduled underlying insurance. **NOTE:** Any combination of primary and excess limits is acceptable as long as the total limits achieved are at least equal to the total limits achieved by the above described combination of primary and excess layers.

1.7. Pollution Legal Liability

Any contractor performing environmental work shall have in effect Pollution Legal Liability or Contractors Site Pollution Liability insurance coverage with an insuring limit of no less than \$5,000,000 per claim and a \$5,000,000 aggregate. Contractor shall name ECMCC and its respective officers, employees and agents as Additional Insured on this policy.

1.8. Additional Insureds

ECMCC and its respective officers, employees and agents shall be named as Additional Insureds, using ISO Form CG 20 10 11 85 or its equivalent, under the policies required in 1.2, 1.3 and 1.5 providing coverage for both ongoing and completed operations. The insurance protection afforded to ECMCC under such policies shall apply on a primary basis and any insurance (or self-insurance program) maintained by ECMCC shall not contribute with the insurance afforded to ECMCC as an Additional Insured.

1.9. Financial Rating of Insurers

The insurance companies providing the required coverages shall be licensed to do so in New York State, and shall be rated no lower than "A-" by the most recent Best's Key Rating Guide or Best's Agent's Guide, and shall have a Best's Financial Size Category of not less than VIII, unless otherwise agreed to by ECMCC.

1.10. Notice of Cancellation, etc.

Contractor is hereby obligated to e-mail or fax to ECMCC a copy of any cancellation or non-renewal notice received from the insurer for any policy affording the coverages required herein within five days of Contractor's receipt of same. Contractor further agrees to provide ECMCC with 30 days advance written notice of cancellation, non-renewal or material reduction in coverage initiated by Contractor with respect to any of the required insurance coverages. For the purpose of this provision, material reduction in coverage shall mean any change or reduction in the scope of insurance coverage that adversely affects the protection that would otherwise be available to ECMCC.

1.11. Deductibles or Self-Insured Retentions

Deductibles or self-insured retentions shall be permitted with the understanding that Contractor (and not ECMCC) shall be responsible for such deductible or self-insured retention.

1.12. General Provisions

Cross-Liability. If the Contractor's liability policies do not contain the standard ISO separation of insureds provision, or an equivalent clause, such policies shall be endorsed to provide cross-liability coverage.

Claims-Made Coverage. For any liability coverages maintained on a claims-made basis, the following provisions apply unless otherwise agreed to by ECMCC:

- i. If the claims-made coverage terms designate a specific retroactive date, Contractor shall maintain a retroactive date which is not later than the earlier of (a) the date of the commencement of the term of this Agreement, or (b) the original coverage retroactive date for Contractor's first claims-made policy for each and every coverage provided on a claims-made basis;
- ii. For the duration of this Agreement, or any subsequent renewals, if the retroactive date is advanced or if the policy is materially changed, cancelled or not renewed, Contractor shall purchase, at its own expense, an extended reporting period endorsement. This endorsement must provide an extended reporting period ("tail" coverage) of three years or the minimum as prescribed by the Insurance Department of the State of New York, whichever is greater;
- iii. Upon termination of the services provided to ECMCC by Contractor, Contractor shall maintain such claims-made coverage without interruption for three years or a period of time equal to the length of any extended reporting period requirement as specified above, whichever is greater (the extended term of protection). If the retroactive date is advanced or if the policy is materially changed, cancelled or not renewed during this period of time, Contractor shall purchase, at its own expense, an extended reporting period endorsement covering a term of three years or the minimum as prescribed by the Insurance Department of the State of New York, whichever is greater. It is understood that the length of this extended reporting period endorsement may be reduced to coincide with any time remaining in the extended term of protection.

1.13. Evidence of Insurance. Contractor shall deliver to ECMCC, prior to commencement of the work, Certificates of Insurance acceptable to ECMCC certifying that policies of insurance for the required coverages have been issued and are in effect and comply with the requirements herein. Upon expiration or cancellation of any policy during the period the coverages under such policy are required to be maintained, Contractor shall immediately deliver to ECMCC a Certificate of Insurance evidencing proper renewal or replacement of the policy.

1.13.1 Certificates evidencing Liability coverage under which ECMCC is required to be named as an Additional Insured must state that "Erie County Medical Center Corporation and its respective officers, employees and agents are included as Additional Insureds on a primary and non-contributory basis with respect to any other insurance or self-insurance programs afforded to, or maintained by, Erie County Medical Center Corporation." The certificate must specify the policies under which such Additional Insured status has been granted and a copy of the Additional Insured Endorsement(s) or Policy Provision(s) that grant(s) the required Additional Insured status must be attached to the certificate. A Waiver of Subrogation in favor of ECMCC shall also be included under the General Liability, Workers Compensation, Automobile and Umbrella Liability coverages and evidence on the certificate of insurance.

1.13.2 Certificates must specify the applicable retroactive date of any claims-made coverage being evidenced.

1.13.3 Failure of ECMCC to demand such Certificate of Insurance or failure of ECMCC to identify a deficiency in a certificate that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

1.13.4 ECMCC shall have the right, but not the obligation, to prohibit Contractor from providing services/products/equipment and/or entering the premises until such

certificate indicating full compliance with the requirements herein has been received and approved by ECMCC.

- 1.13.5 Certificates of Insurance shall be issued and sent to Erie County Medical Center Corporation, Office of General Counsel, 462 Grider Street, Buffalo, New York 14215.
- 1.14. Failure to Secure and Maintain Insurance. Contractor acknowledges that failure to secure the above-specified insurance constitutes a material breach of this Agreement and subjects Contractor to liability for damages and all other legal remedies available to ECMCC. Contractor further acknowledges that procurement of the insurance coverage and limits required herein shall not limit the extent of Contractor's other responsibilities and liabilities specified within the Agreement between ECMCC and Contractor or by law.
- 1.15. Adequacy of Insurance. ECMCC does not in any way represent that the insurance specified herein, whether in scope of coverage or limits of coverage, is adequate or sufficient to protect the business or interest of Contractor.