



The Culture of Care

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ERIE COUNTY MEDICAL CENTER CORPORATION

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REQUEST FOR PROPOSALS  
ARCHITECTURAL / ENGINEERING SERVICES  
FOR:  
MEP SYSTEMS / ELEVATOR IMPROVEMENTS /  
PUBLIC ELEVATOR LOBBY RENOVATIONS /  
MISC. SMALL PROJECTS

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NOVEMBER 14, 2017

RFP # 21728

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

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

**LATE OR INCOMPLETE PROPOSALS MAY BE REJECTED**

Mark in left hand corner of envelope:

RFP # 21728

Due: December 6, 2017

Submitted by: \_\_\_\_\_

**MANDATORY PRE-BID CONFERENCE TO BE HELD**

**MONDAY, NOVEMBER 20, 2017 at 10 a.m. EST**

VIA TOLL FREE TELEPHONE CONFERENCE BRIDGE: 1-866-244-8528

Guest Passcode: 898300

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

Erie County Medical Center Corporation (“ECMCC”), located in Buffalo, New York, is a public benefit corporation created by state law on July 22, 2003, having previously operated as a department of the County of Erie, New York.

ECMCC has an advanced academic medical center consisting of 583 inpatient beds, as well as a Center for Oncology Care, a Center of Excellence for Transplantation and Kidney Care, a Behavioral Health Center of Excellence, numerous on- and off-campus primary care and family health centers, more than thirty outpatient specialty care services, and the Terrace View Long-Term Care Facility, consisting of 390 beds.

In addition, ECMCC is a verified Level 1 Adult Trauma Center by the American College of Surgeons, designated a Level 1 Adult Trauma Center by the NYS Department of Health, and is a regional center for burn care, behavioral health services, transplantation, medical oncology and head & neck cancer care, and rehabilitation. Finally, ECMCC is also affiliated with and a major teaching facility for the University of Buffalo.

## 2. RESERVATION OF RIGHTS. ECMCC reserves the rights to:

- 2.1 Reject any and all proposals submitted in response to this Request for Proposals (“RFP”);
- 2.2 Disqualify any respondent whose conduct or proposal fails to conform to the requirements of this RFP;
- 2.3 Withdraw this RFP at any time at its sole discretion;
- 2.4 Prior to submission of proposals to amend the RFP specifications to correct errors or oversights, or to supply additional information as it becomes available;
- 2.5 Change any of the scheduled dates;
- 2.6 Waive any requirements that are not material;
- 2.7 Waive any non-conformity with the requirements of this RFP;
- 2.8 Terminate this RFP process at any time;
- 2.9 Seek clarification from a respondent at any time throughout the RFP process for the purpose of resolving ambiguities or questioning information presented in proposals;
- 2.10 Award the contract in whole or in part and/or apportion the award among one or more respondents;
- 2.11 Negotiate final terms with the successful respondent(s);
- 2.12 Conduct contract negotiations with the next responsible bidder, should ECMCC be unsuccessful in negotiating with the selected bidder; and
- 2.13 Prepare a list of finalists based on initial proposal evaluations and request that finalists present in-person or telecommunicated presentations to ECMCC.

### 3. RFP SCHEDULE:

RFP Issued:	Tuesday, November 14, 2017
Mandatory Pre-Proposal Conference Call	Monday, November 20, 2017
Deadline for Questions:	Tuesday, November 21, 2017
Notification of Intent to Submit Proposal Due:	Tuesday, November 21, 2017
Answers Issued By Addendum:	Wednesday, November 29, 2017
Proposals Due:	Wednesday, December 6, 2017
Anticipated Contract Award	TBD

### MANDATORY PRE-PROPOSAL CONFERENCE CALL:

A mandatory pre-proposal conference call is scheduled for **Monday, November 20, 2017 at 10 a.m. EST**. This conference call can be accessed by dialing 1-866-244-8528, Conference ID 898300. The purpose of this call is to provide an overview of the RFP and M/WBE and SDVOB requirements and permit respondents an opportunity to ask general questions surrounding these topics. Any content-specific questions however must be submitted in writing by **Tuesday, November 21, 2017** to [srohloff@ecmc.edu](mailto:srohloff@ecmc.edu).

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

### 4. SCOPE OF SERVICES/SPECIFICATIONS:

#### A. General

ECMCC is seeking qualified consultants to provide Architectural/Engineering services for MEP systems Improvements, Elevator Improvements, Public Elevator Lobby Renovations and other miscellaneous projects at ECMCC that will be assigned on an as-needed basis. The successful respondent will provide A/E Services for work associated with various buildings on campus, including the Main Hospital (Tower, chassis, lab building), DK Miller Building, Boiler / Chiller (B/C) Plant, Family Health Center and the ECMC Grounds Building.

ECMCC intends to award this RFP to one firm or Architectural Engineering team to provide design services for the associated projects. A/E Services that will be required from the successful respondent shall include:

1. MEP Systems Improvements & Elevator Improvements - Review, evaluate, and classify existing conditions. Prioritize systems and equipment for repairs, upgrades and/or replacements, taking into account the expected lifespan of current installations / systems. The respondent will be required to complete existing system evaluations within 5-6 weeks of mobilizing onsite. The evaluations and prioritizing of conditions will serve as the basis for developing construction documents and specifications for multiple projects. This process will also include administering weekly meetings with plant operations staff to discuss findings and scope development (including meeting

minute documentation). These projects are expected to bring existing systems and conditions up to current codes, rules, and regulations including but not limited to ASHRAE, NFPA, and the NYS Energy Code. These reviews may include but will not be limited to the following areas: mechanical rooms, basements / tunnels, roof top conditions, 1<sup>st</sup> floor interstitial conditions, patient and staff areas. Systems to be evaluated include but are not limited to the following:

### **HVAC**

1. Boilers / Pumps, ancillary systems – B/C Plant
2. Chillers / Pumps, ancillary systems – B/C Plant
3. Roof Top Units – Multiple Buildings
4. Kitchen Exhaust Fans – Main Hospital, potential back drafting condition.
5. Pump VFD's – hw/cw, condensate – Main Hospital
6. AHU VFD's – Main Hospital
7. VAV Replacements – Main Hospital on multiple floors
8. Temperature Controls – DDC system – Multiple Buildings
9. Elimination of Motor Control Centers – Motor Control Centers
10. Smoke Evacuation System – Main Hospital tower & chassis. Evaluate and correct known code & system deficiencies as outlined in M/E engineering Report dated 9/25/17. The successful respondent will be given a copy of this report.

### **Electrical**

1. Emergency Generators – (Replacements) at Main Hospital & B/C Plant. Including evaluation of generator fuel transfer system from hospital tunnel to B/C plant and potential pump replacements.
2. Exterior Lighting – Multiple Buildings / parking lots, Foot candle study, upgrades on fixtures & wiring.
3. Interior lighting – Main Hospital Tower & Podium, Foot candle study, upgrades on fixtures & controls.
4. Transfer Switches – (Replacements) at Main Hospital
5. Switch Gear – Main Hospital & B/C Plant

### **Plumbing & Fire Protection**

1. H/C water & sanitary sewer piping system replacements due to age of systems – Main Hospital.
2. Supplemental Isolation Valve installations – Main Hospital.
3. Sprinkler systems – Main Hospital.
4. Fire Protection System – Main Hospital, upgrade existing system.
5. Medical gas systems – Main Hospital, supplemental isolation valve installations at ICU, capping off of services at former medical treatment areas, due to current office usage.

Architectural ceiling replacements will also be incorporated into any scope associated with overhead MEP improvements or replacements.

### **Elevator Systems**

1. Replacement of (6-8) existing elevators – Main Hospital & DK Miller, (service elevators, lab elevator, mercy flight etc).
2. Public Elevators – Evaluation of (10) elevators for selective enhancements.

Public Elevator lobby architectural finishes will be renovated (walls, floors, ceilings) – Main Hospital (multiple floors). Including above ceiling – MEP systems.

### **Specialty Systems**

1. Helipad System on lab building roof, evaluation & upgrades to bring existing system up to current code requirements. Includes fire suppression, plumbing & structural framing systems.
  2. Building Management Service Network Design – Design & integration of a new comprehensive (stand-alone) Class A computer network system to monitor and control all Hospital Plant Operations systems.
  3. Pneumatic tube system – Main Hospital – Evaluation of existing system and potential upgrades to user display panels and transfer units. Approximately 60% of the 42 locations are outdated.
  4. Evaluate the integrity of existing fire & smoke – penetrations and opening protectives at selective wall areas as determined by the owner.
  5. Tele/data equipment closets – evaluate the need for potential mechanical & electrical upgrades to existing conditions.
  6. Illuminated ECMC Signage at top of Main Hospital Tower – Evaluation and potential replacement design services.
  7. Ornamental Architectural accent lighting – evaluation of current existing 3<sup>rd</sup> party vendor system on main tower of the hospital, recommendations on alternative installations.
2. Develop construction documents for miscellaneous small projects (for infrastructure, renovation or architectural finish enhancements) on the hospital campus. These projects are anticipated to be less than \$500,000 in construction value.
  3. Develop schematic design cost estimates, advise owner on major equipment procurement time lines. A future CM will provide Design Development & Construction document cost estimates.
  4. Assist future CM with sequencing of work, interim life safety measures, shut down planning and any temporary system cross over implementation. The respondent will also be required to assist in planning the removal and replacement path / route of any major equipment in terms of physical access path clearances.
  5. The future CM is anticipated to be under contract by early February of 2018. It is anticipated that multiple (3-4) large projects may be bid out separately to group major pieces of equipment and or systems. The public elevator lobby renovation project is anticipated to be the first project out to bid.
  6. Based on the complexity of current MEP systems in place the respondent will be required to use BIM modeling to coordinate new installations as part of the

respondent's base AE services. After project completion the model will be turned over to the owner for future use in a file format suitable to the owner's software system (Autodesk Revit).

7. Site Utility documentation updates – The respondent will be required to produce an updated comprehensive site utility drawing for the entire campus as part of this project. This drawing will be produced with the assistance of existing ECMC site utility drawings as well as information that's been obtained from current ongoing & future construction projects (Ground floor Stretcher, New Parking Lots, ED Ramp, ED Expansion). The respondent shall include costs for these services within their base fee.
8. Within this project the respondent or AE team will be asked to develop a multi-year phased program to complete the installation of fire protection systems with-in the Main tower of the hospital (approx.. 50% of the current tower is sprinklered) based on the statement of conditions.). The program will include an anticipated cost breakdown to complete the work by floor / zone of the facility on an incremental yearly basis. The initial installation phase of the program will be included in this project.
9. The respondent firm or AE team will be required to show a proven successful track record of providing construction documents on major MEP improvement projects within the healthcare industry (with projects in excess of \$15 million dollars).

B. A/E Service Fee Structuring:

A description of your proposed fee structure for the solicited services is required in the format described below. Appendix C is included at the end of this RFP for the candidate's completion and inclusion in the pending proposal submission. Before establishing these fee structures there are a few key service scope factors that the Proposers will need to account for in their applicable fee percentages. These factors are as follows:

1. For the purposes of this RFP the definition of "**Contracted Value**" shall mean the sum of all projected applicable construction, renovation, furniture, fixture, and equipment contract costs. This would specifically exclude project applicable Construction Management costs, including direct personnel, reimbursable expenses, and service fees. Costs associated with equipment purchases made directly by ECMCC shall also be excluded.
2. The initial A/E service contract fee shall be based on established budgets. A fee reconciliation process shall follow the award of project related construction, renovation, furniture, fixture, and equipment contracts which shall adjust the A/E fee against the actual Contracted Values.
3. As with any construction or renovation project, none can be completed without the incurrence of contract-related change orders, modifications to the original contract scope. In simple terms these change orders are the result of unforeseen conditions, owner desired changes, and designer errors/omissions, each such incurrence being a "post-bid" recognition. Such changes require additional services on the part of the A/E, including but not necessarily limited to modifications to contract drawings and specifications, related investigation and research, and other work required to accurately define the proposed and or necessary changes to the current contract requirements. Other than those arising out of errors and omissions, these additional services shall be

compensated at the same percentage fee that the original A/E service agreement was based upon. Related fee reconciliations shall occur periodically throughout the duration of the project to adjust the balance due amounts accordingly.

4. The intent of this RFP is to receive multiple service fees for a range of varying sized projects. All service fees are to be indicated as a percentage of the project's "contracted value" or "contracted value range" in the appropriate location on the provided proposal sheet, **Appendix C**.
5. Reimbursable Expenses:  
Reimbursable Expenses for the purposes of this RFP are recognized as a variable (unless otherwise specified) which will be negotiated based upon the eventual scope and extent of the required design services for the individual or group of projects being considered. Qualify in the space provided on the attached proposal sheet(s) or supplemental sheet(s) if necessary, any items or services specifically excluded from your above referenced service fee percentages, those which you would propose to bill separately should such items or services become necessary. **Approved reimbursable expenses shall be billed at cost.**

C. Standard A/E Services:

For the purposes of this RFP the standard set of A/E services (upon which the Proposer's fee percentages are based) shall include the following disciplines as further clarified below:

1. Environmental - the contract documents shall identify and specify hazardous material abatement and/or disposal requirements which shall be part of the standard A/E service scope. Any design-related field sampling and or testing shall be viewed as a reimbursable expense under the A/E's responsibility. Any third party construction phase monitoring, sampling, or other related services shall be provided by the CM.
2. Civil – Including campus wide site utility plan updates. Any design related field sampling and/or testing shall be viewed as a reimbursable expense under the A/E's scope.
3. Structural, Architectural, Mechanical, Electrical, Plumbing & Fire protection
4. Commissioning – the contract documents shall identify Building System Commissioning requirements consistent with the latest FGI standards, differentiating between MEP Contractors and Commissioning Agent responsibilities, this being part of the standard A/E service scope. A/E shall also be responsible for retaining an independent Commissioning Agent as part of its standard service scope. Enhancements, modifications and commissioning of the existing Main hospital tower smoke evacuation system will be included in this project.
5. Security & Access Control - the contract documents shall identify project specific extensions and/or expansions to existing security and access control systems, this being part of the standard A/E service scope. This scope is associated with elevator or public elevator Lobby improvements as well as ceiling modifications that impact security cameras. Misc. small projects may also warrant these services.
6. Signage & Wayfinding - the contract documents shall identify project specific signage and wayfinding requirements which shall be consistent with ECMCC's standard

signage specifications, this being part of the standard A/E service scope. This scope is associated with the elevator and public elevator Lobby improvements. Misc. small projects may also warrant these services.

7. Furniture, Fixtures & Equipment (FF&E) - the contract documents shall identify project specific FF&E requirements, both fixed and movable, differentiating between contractor and owner provided items. A/E shall ensure that all FF&E requirements are accounted for and fully coordinated with the constructed and/or renovated project, this being part of the standard A/E service scope. It is important to note that the A/E **shall not** be compensated for the value of equipment purchased directly by ECMCC.
8. Technology Services – the contract documents shall include tele/data/network design to create a standalone class A building management network for ECMC plant operations as well as any supplemental tele/data design associated with MEP system improvements.
9. BIM-building information modeling - is required as part of the AE’s standard services for any MEP systems.

A CM shall be responsible for the management of the bid and construction phase of each of these above disciplines. The CM contract is anticipated to be awarded by early February of 2018.

D. Extent of Services to be provided:

1. Schematic Design through Construction Administration  
Standard A/E Services inclusive of schematic design, design development, construction document, bid/award, and construction administration phases. The successful respondent will also be asked to assist the CM with the development and issuance of phasing & sequencing drawings by floor level / area in order to coordinate any system shutdowns or transfers from existing equipment to new equipment. The production of construction documents including (evaluation & prioritization of existing conditions) are anticipated to be completed 6 months after contract award. The public elevator lobby renovation construction documents are anticipated to be completed 3 months after contract award. Denote your proposed fee as a percentage of the Project Specific Contracted Value Range in the appropriate location(s) on the provided proposal sheet(s).

5. PROPOSAL REQUIREMENTS:

- 5.1 Proposals must include the following information:
  - 5.1.1 Detailed plan outlining how your company will meet all of the deliverables described in the Section 4 (Scope of Services/Specifications).
  - 5.1.2 Company profile including organizational chart indicating persons who will be assigned to work with ECMCC and resumes
  - 5.1.3 Length of time respondent has been in business.
  - 5.1.4 Detailed fee schedule for all fees incurred for the deliverables included in this RFP in the format and following the instructions in Section 4(B).



- 5.1.5 Three (3) references of facilities similar in size to ECMCC that may be contacted by ECMCC to discuss respondent's services.
- 5.1.6 Disclose whether respondent has ever had a contract terminated and if so, provide a detailed explanation of the contract and circumstances surrounding termination.
- 5.1.7 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.
- 5.1.8 Disclose any other areas that may be a potential conflict of interest.
- 5.1.9 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.
- 5.2 The following forms must be submitted with each proposal:
  - 5.2.1 M/WBE Utilization Plan - Form MWBE 100 (Exhibit A-1) (see Section 7 below).
  - 5.2.2 Respondent Data Form (Exhibit B).
  - 5.2.3 Non-Collusive Bidding Certification (Exhibit C).
  - 5.2.4 Disclosure, Affirmation and Certification in accordance with State Finance Law §§ 139-j and 139-k (Exhibit D).
  - 5.2.5 Not-for-profit budget form (Exhibit E) (note this form is only required if the respondent is a not-for-profit corporation).
  - 5.2.6 Diversity Practices Questionnaire (Exhibit F) (see Section 7 below)

6. EVALUATION CRITERIA & AVAILABLE POINTS:

- A. Quality of relevant project experience (35points).
- B. Quality of references on relevant projects (15 points).
- C. Proposed service fee percentage (40 points).
- D. Diversity Practices (5 points).
- E. Quality of Deliverables Narrative (5 points).

ECMCC will prepare a list of finalists based on initial proposal evaluations and request that the finalists present in-person to ECMCC. The number of finalists will be at ECMCC's discretion upon review of proposals. An additional 15 points will be allocated to finalist presentations. Final award will be based on the total combined score of the finalist's initial proposal evaluation and their onsite presentation.

7. M/WBE REQUIREMENTS AND DIVERSITY PRACTICES:

- 7.1 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.
- 7.2 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 Exhibit A, 5 NYCRR 142.6(a) and 9 NYCRR 252.2(i).
- 7.3 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.
- 7.4 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 exemption 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.

- 7.5 Diversity. 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.

## 8. GENERAL INSTRUCTIONS TO RESPONDENTS:

- 8.1 **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.**
- 8.2 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.
- 8.3 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.
- 8.4 Any change in wording or interlineations by a respondent of the RFP as published by ECMCC shall be reason to reject the proposal of such respondent, or in the event that such change in the RFP is not discovered prior to entering into a contract, to void any contract entered into pursuant to such RFP.
- 8.5 For the purpose of determining which proposal represents best value, it shall be the obligation of all respondents to present information and documentation to ECMCC to establish that the successful 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 is not obligated to accept the lowest proposal, but will perform its evaluation based on the total criteria defined within the RFP.
- 8.6 Failure to perform or meet delivery schedules as per the accepted proposal or resulting contract may result in legal action by ECMCC to recover damages.
- 8.7 The successful respondent shall comply with all laws, rules, regulations and ordinances of the Federal Government, the State of New York and any other political subdivision or regulatory body which may apply to its performance under this contract.

- 8.8 Any cash discount which is part of a proposal will be considered as a reduction in price in determining the award of the proposal.
- 8.9 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.
- 8.10 Any additional information which the respondent desires to add to the response shall be attached to and submitted with the formal response on a separate sheet of paper.
- 8.11 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.
- 8.12 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.
- 8.13 The unit prices shall remain firm, and any other pricing, quote or charges in the proposal shall also remain firm, for delivery of the equipment, material, work or services described in this RFP. No cost increase not covered in the proposal shall be charged for any reason whatsoever unless agreed upon by ECMCC.
- 8.14 In executing their 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 respondent affirms they have checked all of the proposal figures and understands that ECMCC will not be responsible for any errors or omissions on the part of the respondent 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 any proposal security.
- 8.15 **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 contract award 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 complying with State Finance Law Sections 139-j and 139-k. Directors, officer and employees of ECMCC are required to record certain information when contacted during the Restricted Period. A review of whether such contacts were permissible contacts will be considered in connection with any determination of responsibility of the respondent. Failure of any respondent to timely certify or to disclose accurate and complete information or the submission of any intentionally false or intentionally incomplete certification may result in the rejection of the contract award or if such contract has been executed, then the immediate termination of the contract. Violations may result in debarment of the respondent from proposing on or obtaining governmental procurement contracts in the State of New York.

8.16 **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.

## 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.



## 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-B, 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. Upon responding to this RFP, the successful respondent (the “Respondent”) agrees, in addition to any other nondiscrimination provision within the resulting contract (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-B. 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”). Respondent’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 and 9 NYCRR §252.2 shall be a part of these requirements, though demonstration of good faith efforts is not a substitute for meeting the M/WBE and SDVOB participation requirements placed on the contract. 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 disqualification of respondent, the withholding of funds, or such other actions, liquidated damages pursuant to Section VI of this Exhibit or enforcement proceedings as allowed by the Contract.

#### **II. MWBE Contract Requirements**

- A. For purposes of this Contract, ECMCC hereby establishes an overall goal of 30% for Minority and Women-Owned Business Enterprises (“MWBE”), comprised of specific goals of 20% for Minority-Owned Business Enterprises (“MBE”) participation and 10% for Women-Owned Business Enterprises (“WBE”) participation.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE requirements established herein, Respondents should reference the directory of New York State Certified MBWEs found at the following internet address:

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

Additionally, Respondent 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.

#### **III. MWBE Utilization Plans**



## EXHIBIT A

- A. Respondents must submit a fully-executed MWBE utilization plan (the “Utilization Plan”), attached as Exhibit A-1, at the time of proposal submission in response to an RFP, or, in the case of an invitation for bids, within 48 hours of notification by ECMCC that Respondent is the apparently low responsible bidder. ECMCC reserves the right to disqualify any Respondent who fails to submit a fully executed MWBE Utilization Plan with its proposal. The Utilization Plan shall minimally include:
1. the name, address and telephone number of the Respondent;
  2. the Federal identification number of the Respondent;
  3. the names, addresses, and federal identification numbers of certified MWBEs which the Respondent intends to use to perform a commercially useful function on the Contract and a description of the Contract scope of work which the contractor intends to structure to achieve maximum feasible participation pursuant to the prescribed MWBE requirements;
  4. the percentage or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the contractor intends to be performed by a certified MWBE; and
  5. a statement that the utilization of certified MWBEs for non-commercially useful functions may not be counted towards utilization of certified MWBEs in the utilization plan.
- B. By signing the Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a Contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Respondent agrees to utilize the MWBEs listed in the MWBE Utilization Plan for the performance on the Contract. Any modifications or changes to the agreed participation by MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ECMCC for subsequent review and approval.
- C. ECMCC will review the Respondent’s submitted Utilization Plan, and, will issue a written notice of acceptance or deficiency in meeting the MWBE requirements regarding the Utilization Plan. The Respondent must provide a written remedy in response to the notice of deficiency in the form of a revised utilization plan within five (5) business days of receipt of the notice. If the written remedy that is submitted is not timely or is found by ECMCC to be inadequate, ECMCC shall notify the respondent and may, pursuant to 5 NYCRR 142.6(f), at its discretion direct the Respondent to submit, within five (5) business days of notification by ECMCC, a request for a partial or total waiver of MWBE participation requirements in the format described in 5 NYCRR 142.7. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. Where ECMCC determines, after having given notice of deficiency pursuant to 5 NYCRR 142.6(c), that a Respondent has failed to submit an acceptable utilization plan or satisfactorily document its good faith efforts, ECMCC may proceed with awarding to the next lowest bidder or the next ranked Respondent:
1. Twelve (12) days after sending the notice of deficiency to the Respondent, and ECMCC has not received a request for an administrative hearing from the Respondent, or

## EXHIBIT A

2. After the mailing of a notice of disqualification, specifying the grounds for such disqualification, and no timely complaint has been served pursuant to this subsection, or timely complaint was served and ECMCC has received a written notification of a resolution regarding the complaint from New York State.

A Respondent who has received a written notice of disqualification may, within five (5) days of receipt of such a notice, file a complaint with New York State pursuant to Section 316 of the Executive Law. The Respondent shall serve a copy of its complaint upon New York State and ECMCC by personal service or certified mail, return receipt requested.

- E. ECMCC may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:
1. If a Respondent fails to submit a fully executed MWBE Utilization Plan;
  2. If a Respondent fails to timely submit a written remedy in the form of a revised utilization plan to a notice of deficiency;
  3. If a Respondent fails to submit a request for waiver upon request by ECMCC; or
  4. If ECMCC determines that the Respondent has failed to document good faith efforts.
- F. The Respondent agrees that a failure to comply with the utilization of the MWBEs as agreed in such MWBE Utilization Plan during the performance of the Contract shall constitute a material breach of the terms of the Contract, unless a new utilization plan has otherwise been approved by ECMCC. Upon the occurrence of such a material breach, ECMCC shall be entitled to any remedy provided herein. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Respondent acknowledges that if after award of Contract the Respondent is found to have willfully and intentionally failed to comply with the MWBE participation requirements set forth in the Contract, such a finding constitutes a breach of Contract and the Respondent shall be liable to ECMCC for liquidated or other appropriate damages, as set forth herein.
- G. Where MWBE requirements have been established herein, pursuant to 5 NYCRR §142.8, Respondents must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract.
- H. Where the MWBE performs a function or service which fails to serve a commercially useful function relating to the contract, no credit will be granted toward the utilization requirement. An MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MWBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing, where applicable, and paying for the material itself. An MWBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

Factors to be used in assessing whether a MWBE is performing a commercially useful function include: (1) the amount of work subcontracted; (2) industry practices; (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform; and (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE.

## EXHIBIT A

- I. MWBE utilization crediting standards credit brokers only for their commission, or markup percentage, for the items they broker. Bona fide suppliers supplier are credited at 60% of the total contract value. Respondents should contact ECMCC's MWBE Coordinator if they are unclear on whether a potential MWBE's should be reduced for supplier or broker credits.

### IV. Equal Employment Opportunity (EEO)

- A. The Respondent agrees to be bound by the provisions of Article 15-A and the corresponding MWBE regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Respondent shall comply with the following provisions of Article 15-A:
  1. Respondent 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.
  2. The Respondent 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 Respondent.
  3. If Respondent does not have an existing EEO policy statement, Respondent may adopt the attached model statement (Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  4. The Respondent's EEO policy statement shall include the following language:
    - a. The Respondent 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 Respondent 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 Respondent 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 Respondent's obligations herein.

## EXHIBIT A

- d. The Respondent will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Subsection "E" of this Section IV, 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 Respondent 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. Respondents shall complete the Staffing plan form and submit it as part of their bid or proposal.

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

1. Once a Contract has been awarded and during the term of Contract, Respondent 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 located in New York State and 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 Respondent and any subcontractor performing work on the Contract.
3. In limited instances, Respondent may not be able to separate out the workforce utilized in the performance of the Contract from Respondent's and/or subcontractor's total workforce. When a separation can be made, Respondent 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 Respondent's and/or subcontractor's total workforce, Respondent shall submit the Workforce Report and indicate that the information provided is Respondent's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Respondent shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Respondent 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. Quarterly MWBE Contractor Compliance Report

Following award of Contract, Respondent 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 requirements of the Contract.

## EXHIBIT A

### VI. Liquidated Damages

- A. Where ECMCC determines that Respondent is not in compliance with the MWBE requirements of the Contract and/or the MWBE regulations and Respondent refuses to comply with such requirements, or if Respondent is found to have willfully and intentionally failed to comply with the MWBE participation requirements, Respondent 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 Respondent achieved the contractual MWBE requirements; 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, Respondent 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.

### VII. SDVOB Contract Requirements

- A. ECMCC hereby establishes an overall requirement of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>.

Questions regarding compliance with SDVOB participation goals should be directed to the ECMCC's MWBE/SDVOB coordinator at (716) 898-4947. Additionally, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veterans' Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

### VIII. SDVOB Utilization Plan

- A. Respondents must submit a fully-executed SDVOB Utilization Plan (the "SDVOB Utilization Plan"), attached as Exhibit A-2, at the time of proposal submission in response to an RFP, or, in the case of an invitation for bids, within 48 hours of notification by ECMCC that Respondent is the apparently low responsible bidder. ECMCC reserves the right to disqualify any Respondent who fails to submit a fully executed SDVOB Utilization Plan with its proposal. The SDVOB Utilization Plan shall minimally include:
  - 1. the name, address and telephone number of the Respondent;

## EXHIBIT A

1. the Federal identification number of the Respondent;
  2. the names, addresses, and federal identification numbers of certified SDVOBs which the Respondent intends to use to perform a commercially useful function on the Contract and a description of the Contract scope of work which the contractor intends to structure to achieve maximum feasible participation pursuant to the prescribed SDVOB requirements;
  3. the percentage or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the contractor intends to be performed by a certified SDVOB; and
  4. a statement that the utilization of certified SDVOBs for non-commercially useful functions may not be counted towards utilization of certified SDVOBs in the SDVOB Utilization Plan.
- B. By signing the SDVOB Utilization Plan, the Respondent acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a SDVOB Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a Contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Respondent agrees to utilize the SDVOBs listed in the SDVOB Utilization Plan for the performance on the Contract. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ECMCC for subsequent review and approval.
- C. ECMCC will review the Respondent's submitted SDVOB Utilization Plan, and, will issue a written notice of acceptance or deficiency in meeting the SDVOB requirements regarding the SDVOB Utilization Plan. The Respondent must provide a written remedy in response to the notice of deficiency in the form of a revised SDVOB Utilization Plan within five (5) business days of receipt of the notice. If the written remedy that is submitted is not timely or is found by ECMCC to be inadequate, ECMCC shall notify the respondent and may, pursuant to 9 NYCRR 252.2(1)(6), at its discretion direct the Respondent to submit, within five (5) business days of notification by ECMCC, a request for a partial or total waiver of SDVOB participation requirements in the format described in 9 NYCRR 252.2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. Where ECMCC determines, after having given notice of deficiency pursuant to 9 NYCRR 252.2(1), that a Respondent has failed to submit an acceptable SDVOB Utilization Plan or satisfactorily document its good faith efforts, ECMCC may proceed with the next ranked Respondent if ECMCC has not received a request for review from the Respondent. ECMCC shall conduct such review providing the Respondent with an opportunity to be heard and make a determination that confirms the Respondent is disqualified or reaffirms that the Respondent is qualified. Such determination shall constitute a final agency determination.
- E. ECMCC may disqualify a Respondent's bid or proposal as being non-responsive under the following circumstances:
1. If a Respondent fails to submit a fully executed SDVOB Utilization Plan;
  2. If a Respondent fails to timely submit a written remedy in the form of a revised SDVOB Utilization Plan to a notice of deficiency;

## EXHIBIT A

3. If a Respondent fails to submit a request for waiver upon request by ECMCC; or
  4. If ECMCC determines that the Respondent has failed to document good faith efforts.
- F. Respondent agrees that a failure to comply with the utilization of the SDVOBs as agreed in such SDVOB Utilization Plan during the performance of the Contract shall constitute a material breach of the terms of the Contract, unless a new SDVOB Utilization Plan has otherwise been approved by ECMCC. Upon the occurrence of such a material breach, ECMCC shall be entitled to any remedy provided herein. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Respondent acknowledges that if after award of Contract the Respondent is found to have willfully and intentionally failed to comply with the SDVOB participation requirements set forth in the Contract, such a finding constitutes a breach of Contract and the Respondent shall be liable to ECMCC for liquidated or other appropriate damages, as set forth herein.
- G. Where the SDVOB performs a function or service which fails to serve a commercially useful function relating to the contract, no credit will be granted toward the utilization requirement. An SDVOB performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the SDVOB must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing, where applicable, and paying for the material itself. An SDVOB does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation.

Factors to be used in assessing whether a SDVOB is performing a commercially useful function include: (1) the amount of work subcontracted; (2) industry practices; (3) whether the amount the SDVOB is to be paid under the contract is commensurate with the work it is to perform; and (4) the credit claimed towards SDVOB utilization goals for the performance of the work by the SDVOB.

### **IX. SDVOB Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ECMCC with certified SDVOBs whom ECMCC determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

### **X. Monthly SDVOB Contractor Compliance Report**

## EXHIBIT A

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ECMCC during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using specified forms provided by ECMCC at times designated by ECMCC.

### **XI. SDVOB Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.



EXHIBIT A

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 requirements 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 requirements.
(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

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

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

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

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

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

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

Print: \_\_\_\_\_ Title: \_\_\_\_\_

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

**INSTRUCTIONS:** This form must be submitted with any proposal or proposed negotiated contract or within 48 hours of notice from ECMCC that the respondent is the apparent lowest responsible bidder to an IFB. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority or Women-Owned Business Enterprise (MWBE) under the contract. Attach additional sheets if necessary.

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

Federal Identification No.:  
Location of Work: \_\_\_\_\_  
RFP or Bid No.:  
MBE Goals in the Contract: 20%  
WBE Goals in the Contract: 10%  
Authorized Signature:

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

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

<b>PREPARED BY (Signature):</b> <b>DATE:</b> <b>NAME AND TITLE OF PREPARER (Print or Type):</b> SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND REJECTION OF YOUR BID/PROPOSAL OR POSSIBLE TERMINATION OF YOUR CONTRACT.	<b>TELEPHONE NO.:</b>	<b>EMAIL ADDRESS:</b>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------	-----------------------

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

Erie County Medical Center Corporation

EXHIBIT A-2

**SDVOB Utilization Plan**

*Each bidder shall submit a properly executed SDVOB Utilization Plan as an attachment to their proposal.*

**INSTRUCTIONS:** This form must be submitted with any proposal or proposed negotiated contract or within 48 hours of notice from ECMCC that the respondent is the apparent lowest responsible bidder to an IFB. This Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority or Women-Owned Business Enterprise (MWBE) under the contract. Attach additional sheets if necessary.

Contractor's Name and Address:    Federal ID:	Contract Description/Location:		Bid/proposal Date:	<b>SDVOB GOAL</b>
				<b>SDVOB%</b>
			Contract Amount:	<b>6</b>
Certified SDVOB Name, Address, E-mail, and Phone No.	SDVOB	Description of Subcontracting/Supplies	Dollar Value of Subcontract/Supplies	
Federal ID	<input type="checkbox"/>			
Federal ID	<input type="checkbox"/>			
Federal ID	<input type="checkbox"/>			
Federal ID	<input type="checkbox"/>			

Pursuant to Executive Law Article 17-B, my firm will engage in a good faith effort to achieve the SDVOB goals on this contract.	Contractor's Comments:
---------------------------------------------------------------------------------------------------------------------------------	------------------------

Contractor's Signature:		<b>FOR ECMCC USE ONLY</b> <input type="checkbox"/> Accepted <input type="checkbox"/> Accepted as Noted <input type="checkbox"/> Notice of Deficiency Issued SDVOB % _____		
Enter Name:				
Title:				
E-Mail Address:	Date:	ECMCC Authorized Signature:		

**EXHIBIT B  
RESPONDENT DATA**

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

Firm Name: \_\_\_\_\_

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

Address of principal office:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

Check one:

- CORPORATION
- LIMITED LIABILITY COMPANY
- PARTNERSHIP
- INDIVIDUAL

Formed under the laws of the state of: \_\_\_\_\_.

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

- YES
- NO

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

- YES
- NO

Address of Local Office:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT C**  
**NON-COLLUSIVE BIDDING CERTIFICATION**

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

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

**NOTICE**

(Penal Law, Section 210.45)

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

Affirmed under penalty of perjury this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name and Title

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

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

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

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

\_\_\_\_\_

Contract Procurement Number: \_\_\_\_\_

Date: \_\_\_\_\_

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

No

Yes

If yes, please answer the next questions:

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

No

Yes

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

No

Yes

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

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Add additional pages as necessary)

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

No

Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

II. Contractor Affirmation Relating to Procedures Governing Permissible Contacts:

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

Date: \_\_\_\_\_ By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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



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

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

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

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

Respondent name: \_\_\_\_\_

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

**RESPONDENT SIGNATURE**

---

Signature of preparer

---

Date

---

Name of organization

---

Title of signatory

---

# EXHIBIT F

## DIVERSITY PRACTICES QUESTIONNAIRE



I, \_\_\_\_\_, as \_\_\_\_\_ (title) of \_\_\_\_\_ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? **Yes or No**

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

Name	Title	Duties	Initiatives

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-ventures', partners or other similar arrangement for the provision of goods or services to your company's clients or customers? \_\_\_\_\_

3. 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 minority- and women-owned business enterprises as suppliers/contractors?<sup>1</sup> \_\_\_\_\_

4. Does your company provide technical training<sup>2</sup> to minority- and women-owned business enterprises? **Yes or No**

<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.

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.

Date of program	MWBE Company	# of MWBE participating	# of years offered	# of hours per year

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program? **Yes or No**

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.

Governmental Mentoring Program Name	Evidence of Commitment

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? **Yes or No**

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

Time period	Goal	Scope & dollar amount	% of goals attained

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? **Yes or No**

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

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent?

**Yes or No**

If Yes, complete the attached Utilization Plan

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

**EXHIBIT F  
DIVERSITY QUESTIONNAIRE SCORECARD**

ECMCC RFP \_\_\_\_\_

Vendor Name \_\_\_\_\_

Diversity Questions	Total Possible Score	Vendor Score	Weighted Score					
			Yes = 5 pts			No = 0 pts		
Q1 - CDO or other person tasked with function	5							
Q2 - Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners	20		20% + 16 pts	15-19% 14 pts	10-14% 10 pts	5-9% 6 pts	1-4% 2 pts	0% 0 pts
Q3 - Percentage of overhead expenses paid to M/WBEs	16		20% + 16 pts	15-19% 10 pts	10-14% 7 pts	5-9% 4pts	1-4% 1 pts	0% 0 pts
Q4 - M/WBE Training	16		Robust 16 pt	Moderate 8 pt	Minimum 4 pt	None 0pt		
Q5 - M/WBE Mentoring	12		Robust 12 pt	Moderate 8 pt	Minimum 4 pt	None 0pt		
Q6 - Written M/WBE goals included in the Company's procurements	20		Robust 20 pt	Moderate 12 pt	Minimum 6 pt	None 0pt		
Q7 - Formal Supplier Diversity Program	6		Robust 6 pt	Moderate 4 pt	Minimum 2 pt	None 0pt		
Q8 - Utilization Plan	5		Robust 5 pt	Moderate 3 pt	Minimum 1 pt	None 0pt		
<b>Total Score</b>	<b>100</b>	<b>0</b>						
<b>Vendor Diversity Score _____</b>			NYS	1-20	21-40	41-60	61-80	81-100
			ECMC	1	2	3	4	5