



The Culture of Care

ERIE COUNTY MEDICAL CENTER CORPORATION

REQUEST FOR PROPOSALS

340B CONTRACT PHARMACY SERVICES

FEBRUARY 7, 2019

RFP # 21903

The deadline for submission of proposals is **Thursday, March 7, 2019 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, EMAILED OR INCOMPLETE PROPOSALS MAY BE REJECTED

Mark in left hand corner of envelope:

RFP # 21903

Due: March 7, 2019

Submitted by: _____

In accordance with State Finance Law Sections 139-j and 139-k, the designated contact for this RFP is listed below. All questions regarding this RFP must be submitted in writing to the designated contact within the timeframes set forth in the RFP Schedule located at Section 3 of this RFP. Copies of questions and responses will be issued to all respondents as an Addendum to this RFP as set forth in the RFP Schedule.

Designated contact: Sarina M. Rohloff, Buyer (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, request that finalists present in-person or telecommunicated presentations to ECMCC, and allocate additional points based on these presentations.

3. RFP SCHEDULE:

RFP Issued:	Thursday, February 7, 2019
Deadline for Questions:	Thursday, February 14, 2019
Addendum Issued:	Thursday, February 28, 2019
Proposals Due:	Thursday, March 7, 2019
Contract Award:	TBD

4. SCOPE OF SERVICES/SPECIFICATIONS:

ECMCC is a covered entity as defined in Section 340B of the Federal Public Health Services Act, 42 USC 256b, and is eligible to purchase certain outpatient drugs at reduced prices for use by patients of ECMCC. ECMCC is registered as a Disproportionate Share Hospital (DSH) in the 340B program. ECMCC is seeking proposals from qualified licensed pharmacies to provide 340B contract pharmacy services and outpatient prescriptions on behalf of ECMCC to eligible patients. ECMCC intends to qualify and contract with multiple providers.

The successful respondent(s) agree(s) to assume professional and administrative responsibility for all services addressed in these specifications, and to abide by all the requirements set forth by ECMCC as the covered entity in the 340B program. Successful respondents agrees to utilize the covered entity's 340B Processor, Verity.

340B medication is purchased by ECMCC as the covered entity and ECMCC will maintain the title to the drug and be responsible for establishing its price. Only those 340B eligible dispenses that are a net benefit dispense to ECMCC will be accumulated for the purposes of replenishment. A successful respondent agrees that it will not resell or transfer a drug purchased at 340B prices to an individual who is not a patient of the covered entity.

A. Contract Requirements

Respondents must:

1. Hold a valid pharmacy license in the state in which they operate.
2. Comply with all State and Federal laws governing pharmacy operation.
3. Provide comprehensive pharmacy services customarily provided to its customers or as otherwise required by law.
4. Demonstrate the ability to administer all aspects of a Section 340B outpatient drug program.
5. Be willing to engage in a contract pharmacy agreement that comports with all aspects of the 340B contract pharmacy guidelines at 75 Fed. Reg. 10272-10279.
6. Demonstrate the ability to perform its duties in accordance with such contract pharmacy

guidelines, and in particular to implement, with ECMCC, an appropriate system for verifying patient eligibility and protecting against the diversion of 340B drugs.

7. Agree to a “bill to, ship to” procedure for 340B medications. The pharmacy will compare all shipments received to the order and inform ECMCC if there are any discrepancies within five (5) business days of receipt.
8. Process and adjudicate claims online and authorize its switch data provider to provide the required pharmacy dispense data to ECMCC and its 340B processor.
9. Agree to return-to-stock and adjust electronic prescription dispensing history and drug inventory levels within ten (10) working days of prescription filling if the patient has not picked up the prescription within that time.
10. Maintains a tracking system for records which stores information in an easily retrievable format.
11. Maintain all auditable records for a period of time that complies with applicable laws but no less than ten (10) years from the expiration or termination of agreement with ECMCC.
12. Agrees to be subject to internal, independent, outside (such as manufacturers) and government audits.
13. Provide all required information to ECMCC, Government agencies (such as HRSA) and manufacturers for auditing and reporting purposes. Comply with both internal and external audit needs, making business records relating to the 340B services available.
14. Agree to not include Medicaid patients in the program. If found in violation, respondent will pay the covered entity the sum necessary to reimburse manufacturers.

B. Payment Terms

Respondent pharmacy is responsible for paying the Standard Acquisition Cost to the 340B processor working on behalf of ECMCC, the covered entity. In the event that the amount owed by the pharmacy to ECMCC remains unpaid for 30 days following the date of the invoice, ECMCC may cease 340B replenishment inventory orders and/or charge a late fee equal to one percent (1%) per month for all amounts past due until paid in full.

Dispensing fees retained by the pharmacy are outlined below in selection criteria.

5. REQUIRED DOCUMENTS:

The following forms must be submitted with each proposal:

- 5.1 Proposal Requirements Form (Exhibit A). In addition to filling out this form, all respondents should attach as part of this form a detailed proposal plan, a company profile with resumes, and a detailed fee schedule, as more particularly described within Exhibit A.
- 5.2 Equal Employment Opportunity Policy Statement (Exhibit B-1)
- 5.3 M/WBE Utilization Plan (Exhibit B-2) when applicable (see Section 7 below).

- 5.4 SDVOB Utilization Plan (Exhibit B-3) when applicable (see Section 7 below).
- 5.5 Respondent Data Form (Exhibit C).
- 5.6 Non-Collusive Bidding Certification (Exhibit D).
- 5.7 Disclosure, Affirmation and Certification in accordance with State Finance Law §§ 139-j and 139-k (Exhibit E).
- 5.8 Not-for-profit budget form (Exhibit F) (note this form is only required if the respondent is a not-for-profit corporation).
- 5.9 Diversity Practices Questionnaire (Exhibit G) when applicable

6. EVALUATION CRITERIA:

Proposals will be reviewed and evaluated based on the following:

- 1) 340B Experience and Expertise (20 Points)
 - a) Experience serving as a contract pharmacy for 340B providers.
 - b) Experience with a 340B-compliant system for protecting against diversion, duplicate discounts, and other 340B violations.
 - c) Experience with software and other proprietary systems to facilitate or otherwise support 340B-compliant contract pharmacy agreements.
- 2) Prescription services and adjudication (20 Points)
 - a) Quality of electronic drug profile system.
 - b) Quality of electronic drug-drug interaction check system.
 - c) Electronic prescription adjudication capabilities.
 - d) Mail order capabilities.
 - e) Quality of appropriate return-to-stock processes.
 - f) Ability to comply with inventory replenishment system specified by RFP.
- 3) Fees (50 Points)
 - a) Dispense fees will be evaluated on a pharmacy-specific basis. Fee thresholds, dependent on model, have been established and will be applied to each response and weighted accordingly. DIR fees will be excluded from any reimbursement based agreement.
 - b) Winners only model: Relationships where only transactions providing net benefit savings will be considered. Any “All Claims” models will not be considered.
- 4) Other Services (10 Points) – additional items offered to maximize the benefit and reach of the 340B program
 - a) Weekend services
 - b) 24-hour services
 - c) Free delivery services
 - d) Mail order services

TOTAL

100 points

7. M/WBE, SDVOB AND DIVERSITY PRACTICES REQUIREMENTS:

- 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 and follow the instructions set forth in Exhibit B to this RFP.
- 7.2 Utilization Plans. If Exhibit B reflects that MWBE and/or SDVOB participation requirements apply to this RFP, Respondents are required to submit an MWBE and/or SDVOB Utilization Plan (see Exhibit B-2 and Exhibit B-3 with their proposal in accordance with Exhibit B, 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 requirements for each RFP are reflected in Exhibit B of this RFP. In the event that Exhibit B reflects no utilization requirements 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 requirements that have been assigned to this procurement. After exempting personal services, rent, utilities and self-performance, M/WBE requirements 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 requirements 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 F.

Respondents who are for-profit organizations are still required to apply the M/WBE requirements 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 B and B-1) with their proposals that cover all services that are not exempt as described in the above.

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

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. ECMCC reserves the right to reject any proposal in which the respondent objects to or attempts to redline the language of either document.**
- 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 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 Any cash discount which is part of a proposal will be considered as a reduction in price in determining the award of the proposal.
- 8.8 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.
- 8.9 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.
- 8.10 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.

- 8.11 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.
- 8.12 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.
- 8.13 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.
- 8.14 **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.
- 8.15 **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 Erie County Medical Center Corporation (“ECMCC”) for purchase of services or products, or by commencement of any services or shipment of any products or otherwise contracting with 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 “Terms and Conditions”). 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 these Terms and Conditions unless ECMCC expressly agrees to such terms or conditions in writing. In the event of a conflict between the terms of any other agreement entered into between the parties (including any and all attachments thereto and amendments thereof, collectively the “Underlying Agreement”) and the terms of these Terms and Conditions, the terms of these Terms and Conditions 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 these Terms and Conditions and incorporate these terms and conditions into any final agreement with ECMCC prior to commencement of services or shipment of products.

2. **Personnel.** Contractor agrees to provide personnel who are acceptable to ECMCC and who have adequate education, training and experience in such subspecialties which are necessary to perform the Services (the “Professionals”). ECMCC reserves the right to require the removal of any Professional whose practice or services are unacceptable to ECMCC, and Contractor shall promptly provide an acceptable substitute for such removed Professional. Contractor agrees to require each Professional to participate in and comply with ECMCC’s rules, regulations, directives, policies and procedures, as amended from time to time.

3. **Credentialing.**

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

3.2 **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 its campus, 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.

3.3 **Badge Requirements.** At ECMCC’s facilities, each of Contractor’s employees or subcontractors will be given a badge which he or she must wear on full display at all times when at the facilities and be returned upon departure from the facilities.

3.4 **Removal of Employee or Subcontractor.** During the term of these Terms and Conditions and any Underlying Agreement, ECMCC may immediately remove any of Contractor’s employees or subcontractors from 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.

3.5 **Audit.** During the term of these Terms and Conditions and any Underlying Agreement, Contractor will be subject to audit(s) to ensure its compliance with the credentialing requirements contained in these Terms and Conditions. Upon Contractor’s failure to comply with any of these requirements,

ECMCC may (i) terminate any Underlying Agreement or (ii) require Contractor to comply with more stringent credentialing requirements.

4. **Independent Contractor Status.** The parties acknowledge and agree that Contractor is an independent contractor of ECMCC, and that neither these Terms and Conditions nor any Underlying Agreement 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 these Terms and Conditions nor any Underlying 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 these Terms and Conditions or any Underlying Agreement.

5. **Contractor Representations and Warranties.** Contractor represents and warrants that at all times during the term of these Terms and Conditions or any Underlying Agreement:

5.1 All Professionals shall be employees or subcontractors of Contractor.

5.2 All Professionals are in full compliance with all pertinent Federal and State requirements, including but not limited to, immigration, licensing, certification, health and immunizations status, in order to perform the functions assigned to him or her in connection with Contractor's obligation under this these Terms and Conditions or any Underlying Agreement.

5.3 Contractor is not subject to any legal or contractual impediment which would preclude its performance of these Terms and Conditions or any Underlying Agreement unenforceable.

5.4 Contractor has all due legal authority and capacity and is entitled to enter into this these Terms and Conditions and any Underlying Agreement and is authorized to bind Contractor and Contractor's personnel to the terms and provisions of the Underlying Agreement.

5.5 Contractor acknowledges and agrees that ECMCC has relied upon the truthfulness and accuracy of the above representations and warranties in entering into any Underlying Agreement with Contractor, and shall continue to rely upon the completeness, truthfulness and accuracy of such representations and warranties throughout the term of any Underlying Agreement.

6. **Payment.** Invoices submitted should be submitted no later than thirty (30) days following the end of the billing period. ECMCC will make payment within sixty (60) days of receipt of invoice, unless ECMCC reasonably disputes some or all of the invoice.

7. **Billing.** In order to receive compensation for services rendered, Contractor agrees to provide complete and accurate billing invoices to ECMCC on a monthly basis. Invoices submitted must contain sufficient information and documentation to support the charges submitted. Documentation may include time sheets, expense vouchers and any other supportive documentation requested by ECMCC.

8. **Tax exemption.** Invoices and bills 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.

9. **Delivery of Products.** Products to be delivered by Contractor to ECMCC shall be delivered FOB destination, prepaid and invoiced.

10. **Termination.** Any Underlying Agreement shall be subject to termination at the election of ECMCC upon thirty (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 any Underlying Agreement. Other than as set forth in any Underlying Agreement and except in the event of a breach of these Terms and Conditions or any provisions of any Underlying Agreement, upon the effective

date of any termination by either party, the parties shall have no further obligations to each other.

11. **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 as 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. 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 thirty (30) days of the month incurred.

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

13. **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 and hold harmless ECMCC for claims of third parties asserted against ECMCC, to the extent attributable to or caused by the negligent or wrongful act, failure to act, product liability, breach of contract or warranty by Contractor or any of its employees or subcontractors, or an allegation that services or products provided by Contractor, whether individually or in combination with any other work, infringe upon, violate, or misappropriate any third party's patent, trademark, copyright, proprietary, and/or any other intellectual property rights. Contractor shall bear its own costs and expenses, including but not limited to losses, claims, and damages, related to IT systems, electronic records, and cyber security. Contractor may not make a claim against ECMCC for any costs or damages, including but not limited to lost profits, consulting fees, or equipment costs, resulting from a cyber security incident.

14. **Governing Law and Venue.** These Terms and Conditions and any Underlying Agreement shall be governed by the laws of the State of New York. Each of the parties to these Terms and Conditions and any Underlying Agreement consents and submits to the exclusive jurisdiction and venue of the State and Federal courts located in the County of Erie, New York.

15. **Arbitration.** Any dispute, controversy, claim or difference arising out of or relating to any Underlying Agreement or these Terms and Conditions' application or interpretation, shall be resolved by arbitration pursuant to the commercial arbitration rules of the American Arbitration Association then prevailing. Any arbitration hearing shall be held in Buffalo, New York. The provisions of this paragraph are not intended by the parties to limit the right of the parties to seek injunctive relief in a court of competent jurisdiction as a result of any alleged breach of any Underlying Agreement or these Terms and Conditions.

16. **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 ECMCC'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.

17. **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 any Underlying Agreement up to any amounts owing to ECMCC which are past due, with regard to the Contract, any other contract with ECMCC.

18. **Non-Assignment.** Pursuant to Section 109 of the General Municipal Law, Contractor may not assign, transfer, convey, sublet or otherwise dispose of any Underlying Agreement, or Contractor's right, title, or interest in any Underlying Agreement, or Contractor's power to execute any Underlying 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 any Underlying Agreement, or Contractor's right, title or interest herein, or his power to execute any Underlying Agreement, to any other person or corporation without ECMCC's prior written consent as required by law, ECMCC shall revoke and annul any Underlying Agreement, and ECMCC shall be relieved and discharged from any and all liability and obligations arising out of any Underlying Agreement to Contractor and to the person or corporation to which any Underlying 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 any Underlying 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.

19. **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).

20. **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") (collectively, the "Applicable Laws"). To the extent any Protected Health Information (as defined by HIPAA) is exchanged between the parties, Contractor agrees to comply with all applicable HIPAA provisions and the requirements of any regulations promulgated there under, and simultaneous with any agreement to also enter into ECMCC's standard business associate agreement. In the event any Applicable Laws or any interpretation thereof, at any time during the term of any Underlying Agreement, is modified, implemented or determined to prohibit, materially restrict or in any way materially change the material provisions under any Underlying Agreement or these Terms and Conditions, then the parties shall negotiate in good faith to amend any Underlying Agreement and/or these Terms and Conditions to conform to the changed requirements, and if they cannot promptly agree, any Underlying Agreement shall be terminated.

21. **Non-Collusive Bidding Certification.** In accordance with Section 139-d of the State Finance Law, if any Underlying Agreement 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.

22. **Procurement Lobbying.** To the extent any Underlying Agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing any Underlying 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, ECMCC may terminate any Underlying Agreement by providing written notification to the Contractor in accordance with the terms of any Underlying Agreement.

23. **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 ("M/WBE 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 M/WBE 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 M/WBEs or SDVOBs had Contractor achieved the M/WBE or SDVOB goals; and (ii) all sums actually paid to M/WBEs or SDVOBs for work performed or materials supplied under any Underlying 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. If applicable, Contractor shall submit a Monthly Payment Report with each of Contractor's monthly invoices as evidence of Contractor's ongoing compliance with the M/WBE Utilization Plan. Applicable invoices that are not submitted with a Monthly Payment Report will not be accepted by ECMCC or processed for payment.

24. **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 in the format provided by ECMCC reflecting the entirety of Contractor and its subcontractors' workforces performing work on any Underlying Agreement and located within New York State, as well as the salaries of any such employees.

25. **Equal Employment Opportunities.**

25.1 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.

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

25.3 As a part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into any valid and binding Underlying Agreement, shall agree to the following in the performance of any Underlying 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 any Underlying Agreement;
- (ii) Contractor shall state in all solicitations or advertisements for employees that, in the performance of any Underlying 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.

26. **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 any Underlying Agreement 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 any

Underlying Agreement 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 any Underlying Agreement.

27. **Wage and Hour Requirements.** If any Underlying 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.

28. **Records.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under any Underlying Agreement (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 well as ECMCC and its representatives and entities involved in any Underlying Agreement, 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 "FOIL Laws") 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 FOIL Laws is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, ECMCC's right to discovery in any pending or future litigation.

29. **Confidentiality.** The parties acknowledge and agree that the existence of any Underlying Agreement and these Terms and Conditions are strictly confidential. The parties agree that the terms of any Underlying 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 any Underlying 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 any Underlying Agreement or these Terms and Conditions.

The parties further agree that all information which Contractor presently has or which may come into Contractor's possession during the term of any Underlying Agreement relative to the business activities of ECMCC which is of a secret or confidential nature is and shall remain the property of ECMCC. Contractor shall not, during the rendering of Services or thereafter, disclose to others or use for the benefit of others or itself any such information so long as such information is treated as secret or confidential by ECMCC.

30. **No Waiver of Rights.** No failure or delay (in whole or in part) on the part of either party hereto to exercise any right or remedy hereunder shall impair its ability to later exercise any such right or remedy, operate as a waiver thereof, or affect any other rights or remedies that may be available under the law or in equity, except to the extent it causes actual prejudice to the other party. No waiver by either party

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 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, shall be 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.

2. Additional insured and evidence of insurance.

2.1 Additional Insureds. ECMCC and its respective officers, employees and agents shall be named as Additional Insureds under the policies required in 1.2, 1.3, 1.5, 1.6, and 1.7 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.

2.2 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.

2.2.1 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.

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

2.2.3 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.

2.2.4 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(s) indicating full compliance with the requirements herein has been received and approved by ECMCC.

2.2.5 Certificates of Insurance shall be issued and sent to Erie County Medical Center

- 2.3 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.
- 2.4 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.

3. 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.

4. 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 thirty (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.

5. 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.

6. 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.

7. Claims-Made Coverage.

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

- 7.1 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;
- 7.2 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 Department of Financial Services of the State of New York, whichever is greater;
- 7.3 Upon termination of the services provided to ECMCC by Contractor, Contractor shall maintain such claims-made coverage without interruption for three (3) 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 (3) years or the minimum as prescribed by the Department of Financial Services 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.

of any covenant, condition, term or provision of any Underlying Agreement shall be deemed to have been made by that party unless such waiver is in writing and signed by an authorized representative of the party.

31. **No Third Party Rights.** Nothing in these Terms and Conditions or any Underlying Agreement shall be construed or deemed to create any right in any person or entity not a party to any Underlying Agreement, except any permitted successors and assigns, and these Terms and Conditions and any Underlying Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party, including without limitation any Resident or any employee, representative or agent of Contractor or ECMCC.

EXHIBIT A

PROPOSAL REQUIREMENTS

Vendor Name: _____

RFP #: _____

Form completed by: _____

This form is a required document that must be completed and included with the RFP proposal submission. Please attach any additional documents to this form if necessary.

1. Please attach a detailed plan outlining how your company will meet all of the deliverables described in the Section 4 (Scope of Services/Specifications).
2. Please attach a company profile indicating persons who will be assigned to work with ECMCC and resumes. Contact information including contact name, physical address, email address and phone number of the designee that would be responsible for any additional or clarifying information ECMCC may need.
3. Please attach a detailed fee schedule and all fees incurred for the deliverables included in this RFP.
4. Disclose whether respondent has ever had a contract terminated and if so, provide a detailed explanation of the contract and circumstances surrounding termination.

5. 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.

6. Disclose any other areas that may be a potential conflict of interest.

7. 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.

EXHIBIT B

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 VIII of this Exhibit or enforcement proceedings as allowed by the Contract.

II. MWBE Contract Requirements

- A. For purposes of this RFP and Contract, ECMCC is not establishing any specific goals for Minority and Women-Owned Business Enterprises (“MWBE”) 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. 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.

EXHIBIT B

- 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, attached as Exhibit B-1, to ECMCC as an attachment with their proposal.
 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.
 - d. The Respondent will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Workforce Employment Utilization Report
1. Once a Contract has been awarded and during the term of Contract, Respondent is responsible for submitting a workforce employment utilization report (the "Workforce Report") to ECMCC, in a format to be provided by ECMCC, of the work force actually utilized on the Contract, broken down by specified ethnic background, gender, Federal occupational categories, and compensation paid

EXHIBIT B

to each relevant employee. The Workforce Report is to be submitted on a quarterly basis during the term of the Contract for contracts for services and commodities, and monthly for construction contracts, to report the actual workforce located in New York State and utilized in the performance of the Contract.

2. Any subcontractors of Contractor must also submit a Workforce Report described in the above Subsection 1 for the entirety of their workforce performing work on the Contract and located in New York State.
 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.
- D. 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.

VI. SDVOB Contract Requirements

- A. Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. ECMCC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ECMCC contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, respondents are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.
- B. For purposes of this procurement, ECMCC conducted a comprehensive search and determined that the RFP does not offer sufficient opportunities to set specific requirements for participation by SDVOBs as subcontractors, service providers, and suppliers to respondents. Nevertheless, respondents are encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://online.ogs.ny.gov/SDVOB/search>.
- C. Respondents are encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

EXHIBIT B-1

EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT
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

(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 _____, 20_____

By _____

Print: _____ Title: _____

**EXHIBIT C
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 D
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 E
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: _____
