



Erie County Medical Center Corporation  
RFP # 21904  
Addendum Number 1

## **Erie County Medical Center Corporation**

Addendum Number 1 to RFP # 21904

### CONSTRUCTION MANAGEMENT SERVICES FOR MULTIPLE PROJECTS

The deadline for submission still remains:

**Thursday, March 14, 2019 at 11 a.m. EST.**

1. “Exhibit B”- Erie County Medical Center Corporation MWBE, SDVOB and EEO Program Requirements, is hereby amended in its entirety as follows:

“Exhibit B” is hereby removed in the original RFP and replaced with the “Exhibit B” that has been attached to this addendum. Likewise, all references to “Exhibit B” in the original RFP will be in reference to the attached “Exhibit B” - Erie County Medical Center Corporation MWBE, SDVOB and EEO Program Requirements.

2. Section 3 of the RFP incorrectly states that the pre-proposal conference call for RFP 21904 was mandatory. Attendance on the call was voluntary. A recording of the conference call will be accessible on ECMCC’s website at <http://www.ecmc.edu/category/bid-opportunities>.

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### 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 hereby establishes an overall minimum requirement of 30% for Minority and Women-Owned Business Enterprises (“MWBE”), comprised of specific requirements 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-

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5250, (212) 803-2414, or (716) 846-8200 to discuss additional methods of maximizing participation by MWBEs on the Contract.

### III. MWBE Utilization Plans

- A. Respondents must submit a fully-executed MWBE utilization plan (the “Utilization Plan”), attached as Exhibit B-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 apparent 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 Respondent 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 Respondent 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.

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- 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
  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. 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. Such documented efforts shall include, at a minimum:
1. Copies of its solicitations of certified MWBEs and any responses thereto;

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2. If responses to the Respondent's solicitations were received, but a certified MWBE was not selected, the specific reasons that such MWBE was not selected;
3. Copies of any advertisements for participation by certified MWBEs timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by ECMCC, with MWBEs which ECMCC determined were capable of performing the Contract scope of work for the purpose of fulfilling the Contract participation requirements; and
5. 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 MWBEs.

ECMCC may also consider other factors, including those contained in 5 NYCRR §142.8, in determining whether the Respondent has satisfactorily documented good faith efforts.

- 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 requirements for the performance of the work by the MWBE.

- 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.

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- 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

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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 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 Respondent 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.

### **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.

### **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:

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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 Respondent 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://online.ogs.ny.gov/SDVOB/search>.

Questions regarding compliance with SDVOB participation requirements 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 B-3, 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;
2. the Federal identification number of the Respondent;
3. 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;



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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 SDVOB; and
  5. 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:
4. If a Respondent fails to submit a fully executed SDVOB Utilization Plan;
  5. If a Respondent fails to timely submit a written remedy in the form of a revised SDVOB Utilization Plan to a notice of deficiency;
  6. 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.

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- 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 requirements 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 requirements 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**

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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 requirements. 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 requirements set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.