



Department of Health

RFP # - 20482

**Preadmission Screening and Resident Review (PASRR) Level II Evaluation and Determination
Questions and Answers Posted July 26, 2024**

Question Number	Corresponding RFP Section	Question	Answer
1.	1.0 Calendar of Events, Page 3:	When does the Department intend to notify vendors of award?	It is anticipated that all bidders will be notified of the outcome of the procurement process prior to the anticipated contract start date stated in the Calendar of Events.
2.	2.1.2 Level I Overview/ 4.3 Reporting, Page 6 and 11:	Please provide the annual volumes of categorical outcomes by type for each of the past three years.	The Department does not have this information.
3.	2.1.2 Level I Overview/ 4.3 Reporting: Page 6 and 11:	Will the contractor complete a clinical review of any categorical outcomes when indicated instead of a Level II evaluation? If so, what is the process and will the vendor be expected to provide notification of the outcome to all applicable parties?	No, this is outside of the scope of this RFP.
4.	3.1, Minimum Qualifications para. # 1, Page 7:	Please confirm that the three-year minimum experience period is calculated effective from the vendor's go-live date for provision of PASRR services, rather than from the date of notice of award.	Confirming, a three-year minimum experience is calculated effective from date of proposal submission

5.	4.1 Tasks and Deliverables, Page 8:	Please confirm that the bidder can use their own Level II evaluation tool and summary of findings/determination, and notification letters.	The Bidder must determine how they will meet the requirements stated in the RFP.										
6.	4.1 Tasks and Deliverables, Page 8:	Can New York State provide the number of Level II evaluations by county on a monthly basis?	The Department is able to partially answer this question. Please see Exhibit 1, separately attached for monthly and annual volumes of PASRR Level II Evaluations by county for the year of 2023.										
7.	4.1 Tasks and Deliverables, Page 8:	Please provide the last three years of annual and monthly volumes of PASRR Level II evaluations by county so that all bidders can determine regional staffing needs.	The Department is able to partially answer this question. Please see Exhibit 1, separately attached for monthly and annual volumes of PASRR Level II Evaluations by county for the year of 2023.										
8.	4.1 Tasks and Deliverables, Page 8:	Please provide the average time for completion of the Level II evaluation for each of the past three years.	Please see table below for the average time for completion of Level II evaluations for mental health evaluations for the past three years, including January 2024 through June 2024. <table><tr><td>Year</td><td>Yearly average turnaround time (days)</td></tr><tr><td>2024</td><td>5.4</td></tr><tr><td>2023</td><td>3.68</td></tr><tr><td>2022</td><td>4.4</td></tr><tr><td>2021</td><td>3.47</td></tr></table>	Year	Yearly average turnaround time (days)	2024	5.4	2023	3.68	2022	4.4	2021	3.47
Year	Yearly average turnaround time (days)												
2024	5.4												
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9.	4.1 Tasks and Deliverables, Page 9-10:	Pg. 9 states, "NF applicants for whom the Contractor is recommending SS, the Contractor completes Level II evaluations and forwards required documents to OMH Clinical Director within 5 calendar days after the day the entity that performed the Level I SCREEN referred the applicant to the Contractor for a Level II..." while pg. 10 states, "ensure Contractor completes PASRR within 9 calendar days of when they receive a referral for a Level II..." Could you please clarify within how many days the PASRR Level II evaluation must be completed?	See §4.1, Page 10: Ensure that the Contractor completes a Preadmission Screening or Resident Review within nine (9) calendar days of when they receive a referral for a Level II evaluation and determination [483.112(c)(1)]. Regarding Specialized Services recommendations, combined, the Contractor should complete their evaluation <i>and</i> forward required documents to the OMH clinical director within 5 days, so that the OMH clinical director has up to 4 more days from receiving documentation to issue a determination.										

10.	4.2 Staffing: Page 10:	Does this apply to current staff that will work on the project or does this apply to only new staff hired? What if we contract with a company that has these qualified persons on their staff?	This applies to all staff proposed to work on this contract, whether or not they are current, newly hired or obtained through a subcontracting agreement.																	
11.	4.3 Reporting, Page 11:	Please provide the annual volumes of reconsideration cases completed for each of the past three years.	The Department does not have this information.																	
12.	4.3 Reporting, Page 11:	Please provide the annual volumes of terminated cases, by type and rationale for each of the past three years.	The Department does not have this information.																	
13.	4.3 Reporting, Page 11:	Please provide the annual volumes of Level II excluded due to primary major neurocognitive disorder for each of the past three years.	Please see table below for the past three years' mental health evaluations, including January 2024 through June 2024. <table><tr><td>Year</td><td>Total Evaluations</td><td>Excluded due to primary major neurocognitive disorder</td></tr><tr><td>2024</td><td>1,177</td><td>96</td></tr><tr><td>2023</td><td>2,152</td><td>119</td></tr><tr><td>2022</td><td>2,327</td><td>169</td></tr><tr><td>2021</td><td>2,339</td><td>156</td></tr></table>			Year	Total Evaluations	Excluded due to primary major neurocognitive disorder	2024	1,177	96	2023	2,152	119	2022	2,327	169	2021	2,339	156
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14.	4.3 Reporting, Page 11:	Please provide the annual volumes of canceled cases by type and rationale for each of the past three years.	The Department is able to partially answer this question. Please see table below for the past three years' canceled evaluations, including January 2024 through June 2024. <table><tr><td>Year</td><td>Total Evaluations</td><td>Canceled</td></tr><tr><td>2024</td><td>1,177</td><td>63</td></tr><tr><td>2023</td><td>2,152</td><td>128</td></tr><tr><td>2022</td><td>2,327</td><td>145</td></tr><tr><td>2021</td><td>2,339</td><td>163</td></tr></table>			Year	Total Evaluations	Canceled	2024	1,177	63	2023	2,152	128	2022	2,327	145	2021	2,339	163
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15.	4.3 Reporting, Page 11:	What was the volume of cases referred to the Office for People with Developmental Disabilities (OPWDD) in 2023?	The Department does not have this information.
16.	4.3.2 Quarterly Reports/ 6.2.4.2 Approach to Performing Tasks: Page 12 and 26	Please provide the annual volumes of individuals diverted from receiving services within a nursing facility setting, then recommended to receive services within a community setting, for each of the past three years.	This question is not clear, therefore it cannot be answered.
17.	4.5 Hearing and Appeal System, Page 13:	Please provide the annual volumes of PASRR appeals conducted for each of the past three years.	The Department does not have this information.
18.	4.5 Hearing and Appeal System, Page 13:	Please provide the annual volumes of PASRR hearings conducted for each of the past three years.	As stated in §4.5, in the last five years, there have not been any formal hearings.
19.	4.11.1, Data Breach and Privacy Liability Insurance para. #1-4, Page 16:	Will the Department please consider amending the requirements set forth in RFP Subsection 4.11.1 as shown below? The Contractor shall carry and maintain applicable coverage during and for a period of one (1) years after completion of this contract, Data-Breach <u>Security</u> and Privacy/Cyber Liability Insurance including <u>data breach of PII, PHI and confidential information</u> coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the DOH's 21 Authorized Users' systems <u>PII, PHI, and confidential information</u> due to the <u>wrongful acts, errors or omissions</u> actions-of <u>committed by</u> the Contractor with <u>which</u> results in the unauthorized access to the DOH's <u>PII, PHI, and confidential</u> data.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

Contractors are required to maintain during the term of the contract, ~~Data Breach~~ Security and Privacy Liability Insurance (Cyber Insurance), including coverage for data breach of PII, PHI, and confidential data ~~coverage for failure to protect confidential information~~ and failure of the security of the Contractor's computer systems or Agency's ~~systems~~ PII, PHI, and confidential information due to the wrongful acts, errors or omission committed by the ~~actions of the~~ Contractor which results in unauthorized access to the Agency's PII, PHI, or confidential information ~~or its data~~. Said Insurance shall provide coverage for damages arising from, but not limited to the following:

- Data Breach of PII, HI, and confidential information ~~duty to protect the security and confidentiality of nonpublic proprietary corporate information;~~
 - Personally identifiable information (PII) (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
 - Privacy notification costs;
 - Regulatory ~~defense~~ finest and penalties associated with a data breach of PII and PHI;
 - Website media content liability ;
- Have a minimum insurance limit of \$10,000,000.
- A Commercial Crime insurance policy for employee embezzlement/theft, forgery or alteration, money order or counterfeit currency Fraud, funds transfer fraud, computer transfer fraud, and

		Cyber theft of customer's property <u>with a limit of \$1,000,000, including but not limited to money and securities</u> If the policy is written on a Claims-Made basis, <u>the insurance policy shall be continuously renewed and maintained. If the policy is cancelled and not replaced or renewed with another equal insurance policy with the same retroactive date, the Contractor shall purchase for one year after completion of this contract tail coverage. The Contractor must submit to the Agency an Endorsement providing proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.</u>	
20.	4.11.2, Technology Errors and Omissions Liability Insurance para. #1 – 2, Page 16:	Will the Department please consider amending the requirements set forth in RFP Subsection 4.11.2 as shown below? The Contractor shall maintain, during the term of the contract, Technology Errors and Omissions Liability Insurance for Claims for damages arising <u>out of wrongful acts, errors or omissions committed by the Contractor in performing its professional services as follows</u> from computer related services including, but not limited to the following: consulting, data processing, programming, system integration, software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment and computer software developed, manufactured, distributed, licensed, marketed or <u>sold with a minimum limit of \$10,000,000.</u> The policy shall include coverage for third party fidelity including cyber theft. If the policy is written on a Claims-Made basis, <u>the insurance policy shall be continuously renewed and maintained. If the policy is cancelled and not replaced or renewed with another equal insurance policy with the same</u>	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		retroactive date, the Contractor shall purchase for one year after completion of this contract tail coverage. the Contractor must provide to the Agency proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.	
21.	4.11.3, Professional Liability para. #1, Pages 16-17:	Will the Department please consider amending the requirements set forth in RFP Subsection 4.11.3 as shown below? The Contractor, and any subcontractor retained by the Contractor to work on the Contract to which such insurance coverage may be applicable, shall procure and maintain during and for a period of three (3) years after completion of the Contract, Professional Liability Insurance/Errors and Omissions Liability Insurance in the amount of \$2,000,000 issued to, and covering damage for <u>liability wrongful acts, errors and omissions committed by the Contractor in performing its professional services</u> imposed on, the Contractor (or applicable subcontractor) by the Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Contract. The Professional Liability Insurance/Errors and Omissions Liability Insurance may be issued on a Claims-Made Policy form in which case the Contractor (or applicable subcontractor) shall purchase, at its sole expense, Tail coverage of up to three (3) years after work is completed if coverage is cancelled and not renewed.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

22.	4.12 Minority & Women Owned Business Enterprise Requirements Page 17	Can NYS DOH confirm if this is a requirement?	Yes, this procurement is subject to Article 15-A.												
23.	4.12 Minority and Women Owned Business Enterprise Requirements, Page 17 and Attachment 5; Form 4,	The instructions for MBE WBE Form #4 indicate that this information is required for bid submission but is for research purposes only. Please confirm that the expectation is to provide an estimate in the workforce by gender and ethnicity as this information could change between bid submission and contract start.	As stated in Attachment 5, Form #4, this form should be completed based on the composition of proposed staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This is for diversity research purposes only and has no bearing on MWBE goal achievement.												
24.	5.7, Freedom of Information Law para. #1; and Section 6.1.2, para. #1, Page 21:	Please confirm we may provide a wholly written response that contains proprietary and non-proprietary information, with the proprietary sections marked with a separate list of those items with justification.	Within the Bidder's Administrative Proposal, a Bidder must clearly specify and justify what part of their proposal they deem proprietary.												
25.	6.1.2, Freedom of Information Law Proposal Redactions: Page 21	Does the Department require a separate redacted copy of the proposals? Or is the preference for a list of items to be redacted with corresponding Page numbers?	No, within the Bidder's Administrative Proposal, a Bidder must clearly specify and justify what part of their proposal they deem proprietary.												
26.	6.2.4.2 Approach to Performing Tasks Page 25:	The RFP states the average monthly number of 2023 reviews is 180. What is the monthly average for 2022 and YTD 2024?	Please see table below for the average monthly volumes, including January 2024 through June 2024. <table><tr><th>Year</th><th>Total Evaluations</th><th>Monthly Average</th></tr><tr><td>2024</td><td>1,177</td><td>203</td></tr><tr><td>2023</td><td>2,152</td><td>180</td></tr><tr><td>2022</td><td>2,327</td><td>194</td></tr></table>	Year	Total Evaluations	Monthly Average	2024	1,177	203	2023	2,152	180	2022	2,327	194
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27.	6.2.4.2 Approach to Performing Tasks, para #6, Page 25	The RFP states the total number of in-person PASRR Level II evaluations as on average 180 per month and notes The New York Level I identification function is subject to change in the future. Is New York state planning to revise the Level I screening form? If yes, can New York State share the predicted volume of individuals screening positive for Serious Mental Illness (SMI) should the Level I identification function be changed?	The Department is reviewing the Level I identification function and may revise in the future. As it has not occurred, the Department is unable to predict the volume of individuals expected to screen positive for mental illness. However, if the identification function is to change, it is expected to increase the amount of Level II referrals.															
28.	6.2.4.2 Approach to Performing Tasks, para. 8, Page 26:	Please provide the annual volumes of the number of individuals recommended to receive Specialized Services for each of the past three years.	Please see table below for the annual volumes of individuals who had a mental health PASRR Level II evaluation, who were recommended to receive Specialized Services for the past three years, including January 2024 through June 2024. <table><tr><th>Year</th><th>Total Evaluations</th><th>Recommended for Specialized Services</th></tr><tr><td>2024</td><td>1,177</td><td>12</td></tr><tr><td>2023</td><td>2,152</td><td>14</td></tr><tr><td>2022</td><td>2,327</td><td>9</td></tr><tr><td>2021</td><td>2,339</td><td>11</td></tr></table>	Year	Total Evaluations	Recommended for Specialized Services	2024	1,177	12	2023	2,152	14	2022	2,327	9	2021	2,339	11
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29.	7.0 Proposal Submission, para 1, page 27:	Please confirm that the bidder can use smaller than the 11-point font requirement for graphics and figure captions.	The Department will allow a smaller font size for graphics and figures. However, use of alternate font sizes could result in an evaluator’s inability to read this information.															
30.	7.0 Proposal Submission: para. #1, Page 27:	The RFP requires Bidders to respond using 11-point or larger font size. May Bidders use a smaller, still readable font for each of the following: a) headers and footers b) RFP requirement text c) exhibits/figures/graphics d) tables	The Department will allow a smaller font size for graphics and figures. However, use of alternate font sizes could result in an evaluator’s inability to read this information.															

31.	7.0 Proposal Submission: para 2, Page 28	Due to changes resulting from Covid 19, our current workforce is mostly located remotely. Because of this, will New York State DOH make an exception regarding signatures and allow us to provide electronic signatures on the forms and other documentation?	As stated in §7.0, the proposals designated as originals should have a handwritten signature and be signed in blue ink.
32.	7.0 Proposal Submission: para. #2, Page 28:	May e-signatures be accepted in lieu of signatures in blue ink?	As stated in §7.0, the proposals designated as originals should have a handwritten signature and be signed in blue ink.
33.	Attachment B: Cost Proposal; Page 9-1	Does the annual volume of 2,160 only include completed face-to-face Level II evaluations and determinations? Or does it also include categorical , terminated, excluded, and/or cancelled PASRR outcomes?	The annual volume includes completed face-to-face and remote evaluations and determinations (upon approval from The Department). This number includes individuals who were excluded from PASRR due to no diagnosis and excluded from PASRR due to a primary neurocognitive disorder. It does not include individuals who qualified for a categorical determination and does not include canceled evaluations.
34.	Attachment 8, NY State Dept' of Health Contract, Section I.- N., NYSDOHC-Page 2:	Section I General Terms and Conditions, Subsection (N) of the Dept. of Health Contract, allows the Department to "conduct any inspection at a time during normal business hours" at the Contractor's business. Will the Department please consider inserting a notice requirement into this provision? For example: N. <u>With 30 days prior written notice</u>, the Department shall conduct any inspection at a time during normal business hours where the activities of the work under this Contract are taking place and in a manner so as not to unreasonably disrupt the Contractor's business. During its inspection the Department may review and audit any materials related to this Contract.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

35.	Attachment 8, NY State Dept' of Health Contract, Section I.- N., NYSDOHC-Page 2:	Can we have a 30-day notice period applies so we can ensure availability of resources for an audit?	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
36.	Attachment 8, NY State Dept' of Health Contract, Section III. – B., NYSDOHC-Pages 3-4:	Will the Department please consider inserting a 30-day cure period to allow Contractor to attempt to cure any breach before the Department's right to terminate becomes effective? For example: B. This Contract may be terminated by mutual written agreement of the Contracting parties. This Contract may be terminated by the DEPARTMENT for cause upon the failure of the CONTRACTOR to comply with the terms and conditions of this Contract, including the attachments hereto. <u>The Department shall provide written notice of such breach or failure and provide the CONTRACTOR thirty (30) calendar days to cure such breach. If the CONTRACTOR does not cure such breach or failure within thirty (30) calendar days after the written notice to cure,</u> the Department shall, provided that the DEPARTMENT shall give the CONTRACTOR written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving CONTRACTOR'S receipt therefore, such written notice to specify the CONTRACTOR'S failure and the termination of this Contract. If the Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the DEPARTMENT. The CONTRACTOR agrees to incur no new obligations no to claim for any expenses made after receipt of the notification of termination.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

37.	Attachment 8, NY State Dept' of Health Contract, Section III. – D., NYSDOHC-Page 4:	Subsection D of Section III Term and Termination allows the Department to issue a stop work order in event of performance failure on behalf of the Contractor and to terminate the Contract should Contractor fail to cure the failure “within a reasonable time as specified by the Department, but not to exceed 30 days.” Additionally, Subsection D allows Department to replace Contractor and makes Contractor liable for any costs required to perform the work exceeding Contractor’s cost. Will the Department please consider amending the cure period to be a minimum of 30 days and remove Contractor’s liability for such consequential costs? For example: D. The DEPARTMENT reserves the right to stop the work being performed under this Contract at any time that the DEPARTMENT deems the CONTRACTOR to be unwilling or unable to perform the work to the satisfaction of the DEPARTMENT. In the event of such cessation of work, and where the CONTRACTOR has been afforded an opportunity to cure its inability to adequately perform within a reasonable time as specified by the DEPARTMENT, but not <u>less than thirty (30) calendar days</u> to exceed 30 days, and the CONTRACTOR has failed to remedy such defect of performance to the satisfaction of the DEPARTMENT, the DEPARTMENT shall have the right to terminate this Contract and to arrange for the completion of the work in such manner as the DEPARTMENT may deem advisable. and if the cost of having the work completed by a replacement CONTRACTOR exceeds the amount of the initially awarded Contract, the CONTRACTOR and its surety shall be liable to the DEPARTMENT for any excess cost on account thereof.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
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38. Attachment 8, NY State Dept' of Health Contract, Section III. – F. (1), NYSDOHC- Page 4:	Subsection F (1) of Section III Term and Termination allows the Department to terminate the Contract immediately should Contractor fail to perform any of the terms, covenants, or promises of this Contract. Will the Department please consider amending this provision to allow the Contractor a thirty day cure period? For example: 1. In the event that the CONTRACTOR, through any cause, fails to perform any of the terms, covenants or promises of this Contract, the DEPARTMENT thereupon shall <u>provide CONTRACTOR with written notice of such failure to perform. If Contractor fails to cure such failure within thirty (30) calendar days of such notice, the Department shall</u> have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the CONTRACTOR. 2.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
39. Attachment 8, NY State Dept' of Health Contract, Section III. – F. (2), NYSDOHC- Page 4:	Subsection F (2) allows the Department to terminate the Contract should Contractor act in such a way “which is likely to or does impair or prejudice the interests of the department. Will the Department please consider amending this provision to allow the Contractor a thirty day cure period? For example: 2. If, in the judgment of the DEPARTMENT, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the DEPARTMENT, the DEPARTMENT shall <u>provide CONTRACTOR with written notice of such actions. If Contractor fails to cure or remedy such actions within thirty (30) calendar days of such notice, the Department shall</u> thereupon have the right to terminate this Contract by giving notice in writing of the fact and	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		date of such termination to the CONTRACTOR. The CONTRACTOR shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the CONTRACTOR prior to the effective date of termination of this Contract, such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of termination, subject to audit by the State Comptroller.	
40.	Attachment 8, NY State Dept' of Health Contract, Section III. – G., NYSDOHC-Page 5:	Will the Department please consider adding a provision to Subsection G that clarifies that in the event of termination, for any reason, Contractor shall be reimbursed for services performed up to the date of termination? For example: <u>3. Upon termination of this Contract for whatever reason and regardless of the nature of default (if any), DEPARTMENT agrees to pay CONTRACTOR in full for all services satisfactorily provided to DEPARTMENT under this CONTRACT as of the effective date of termination.</u> Should the State find adding such provision acceptable, Subsection F (2) should also be modified as shown below to avoid any conflict or confusion: 2. If, in the judgment of the DEPARTMENT, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the DEPARTMENT, the DEPARTMENT shall <u>provide CONTRACTOR with written notice of such actions. If Contractor fails to cure or remedy such actions within thirty (30) calendar days of such notice, the Department shall</u>	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		thereupon have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the CONTRACTOR. The CONTRACTOR shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the CONTRACTOR prior to the effective date of termination of this Contract, such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of termination, subject to audit by the State Comptroller	
41.	Attachment 8, NY State Dept' of Health Contract, Section IV., NYSDOHC-Page 5-8	Various subsections within the Contract Insurance Requirements require the proponent to insure their subcontractors. Can the State please remove this requirement if prime contractors require their subcontractors to carry the requisite insurance under this Contract?	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
42.	Attachment 8, NY State Dept' of Health Contract, Section IV. – A., NYSDOHC-Page 5:	Can the Department please confirm that an Accord form Certificate of Insurance is “reasonably acceptable” evidence of insurance policies acceptable to the Department?	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
43.	Attachment 8, NY State Dept' of Health Contract, Section IV. – B. (2), NYSDOHC-Page 5:	Will the Department accept the following modifications to Subsection B.2? Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an occurrence basis, <u>except for Professional/Technology/Cyber Liability insurance policies.</u> Under certain circumstances, the	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		DEPARTMENT may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled and not renewed during that time, the CONTRACTOR must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3- year period after completion of the Contract. Written proof of this extended reporting period must be provided to the DEPARTMENT prior to the policy's expiration or cancellation.	
44.	Attachment 8, NY State Dept' of Health Contract, Section IV. – B. (3), NYSDOHC- Page 5-6:	Will the State please amend this subsection B.3 Certificates of Insurance so to allow the State to accept emailed certificates of insurances? Many insurance providers will no longer mail hard copies of insurance.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
45.	Attachment 8, NY State Dept' of Health Contract, Section IV. – B. (3b), NYSDOHC- Page 6:	Will the State please consider amending subsection B. 3(b) as shown below: b. Disclose any deductible, self-insured retention, aggregate limit, or any exclusion to the policy that material changes the coverage required by this contract.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
46.	Attachment 8, NY State Dept' of Health Contract, Section IV. – B. (4), NYSDOHC- Page 6:	Subsection B 4 Primary Coverage requires proponents to carry protective liability insurance. This form of insurance is applicable only to the construction industry. Can the State please amend this subsection to remove this requirement?	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

47. Attachment 8, NY State Dept' of Health Contract, Section IV. – B. (5), NYSDOHC- Page 6-7:	Will the State please consider amending subsection B 5 Policy Renewal/Expiration as shown below? At least two weeks prior to the expiration of any policy required by this Contract, Evidence of renewal or replacement policies of insurance with terms no less favorable to the DEPARTMENT than the expiring policies <u>where possible in the insurance industry shall be delivered to the DEPARTMENT within ten (10) days of the insurance policy renewal via email from the insurance broker in the manner required for service of notice in subsection B.3.</u> Certificates of Insurances/Notices of this Section. If, at any time during the term of this Contract, the coverage provisions and limits set forth in this Contract or proof thereof is not provided to the DEPARTMENT, the CONTRACTOR shall immediately cease work under this Contract <u>if required certificates of insurance and required endorsements are not provided.</u> The CONTRACTOR shall not resume work under this Contract until authorized to do so by the DEPARTMENT. Any delay, time lost, or additional cost incurred as a result of the CONTRACTOR not having insurance required by this Contract or not providing proof of same in a form reasonably acceptable to the DEPARTMENT shall not give rise to a delay claim or any other claim against the DEPARTMENT. Should the CONTRACTOR fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided to the DEPARTMENT, the DEPARTMENT may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the CONTRACTOR, require the Surety, if any, to secure appropriate coverage and/or purchase insurance complying with this Contract and charge back such purchase to the CONTRACTOR.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
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48.	Attachment 8, NY State Dept' of Health Contract, Section IV. – B. (6), NYSDOHC- Page 7:	Will the State please consider amending subsection B 6 as shown below? 6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductible/self-insured retentions above- \$100,000.00, which are subject to approval from the DEPARTMENT. Additional surety/security may be required in certain circumstances. The CONTRACTOR shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. <u>If so requested, the Contractor shall provide copies of audited financial statements as evidence of its ability to pay its deductible or self-insured retention.</u>	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
49.	Attachment 8, NY State Dept' of Health Contract, Section IV. – C. (1), NYSDOHC- Page 7:	Will the State please consider amending Subsection C Specific Coverages and Limits, Item 1 Workers Compensation as shown below? For work to be performed in New York State, the CONTRACTOR shall provide and maintain coverage during the life of this Contract for the benefit of its employees as are required to be covered by the NYS Workers' Compensation Law. The CONTRACTOR shall provide notice to the DEPARTMENT immediately if CONTRACTOR'S Worker's Compensation coverage has lapsed or terminated during the PERIOD of this Contract. <u>The Contractor's insurers shall, according to each insurance policy's provisions, provide at least 30 days' prior written notice of cancellation or non-renewal and 10 days' prior written notice for non-payment of premium to the certificate holder on file with insurers.</u> If the Contract involves work on or near a shoreline, a U.S. Longshore policy and Harbour Worker's Compensation Act and/or Jones Act as applicable must be provided. Any waiver of this requirement	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		must be approved by the DEPARTMENT and will only be granted in unique or unusual circumstances. Unless the CONTRACTOR is a political sub-division of New York State, evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board: C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance.	
50.	Attachment 8, NY State Dept' of Health Contract, Section IV. – C. (3), NYSDOHC-Page 8-9:	Will the State please consider amending this Subsection 3 Commercial General Liability as shown below? For work to be performed in New York State, the CONTRACTOR shall provide and maintain Commercial General Liability Insurance (CGL) covering the <u>bodily injury and/or property damage</u> liability <u>of committed by</u> the CONTRACTOR <u>for</u> <u>bodily injury, property damage, and including for</u> personal <u>and</u> advertising injury arising from CONTRACTOR'S work and operations under this Contract, using form CG 00 01-12-07 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following: a. Each Occurrence limit - \$1,000,000 b. General Aggregate - \$2,000,000 c. Products/Completed Operations must be equivalent to the "General Aggregate" limit d. Personal/Advertising Injury - \$1,000,000 e. Damage to Rented Premises <u>Rented to You</u> - \$50,000 f. Medical Expense - \$5,000 Coverage shall include, if applicable, the following: a. premises <u>operations</u> liability; b. independent contractors/subcontractors	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		c. blanket Contractual liability, including tort liability of another assumed in an <u>Insured Contract</u>; d. defense and/or indemnification obligations, including obligations assumed under <u>costs outside of the limits this contract</u>; e. cross liability for additional insureds f. products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by this Contract; g. explosion, collapse, and underground hazards <u>[Intentionally Omitted – Applicable to Construction Industry Only]</u> h. liability resulting from Section 240 or 241 of the New York State Labor Law; and <u>[Intentionally Omitted]</u> i. Cybersecurity Liability (liability is included in the Professional Liability insurance policy) The following ISO forms must be endorsed to the policy: a. <u>CG 00 01 01-96</u> or an <u>equivalent</u> – Commercial General Liability Coverage Form <u>CG 20 10 11-85</u> or an <u>equivalent</u> – Additional Insured-Owner, Lessees or CONTRACTORS (Form B) c. <u>CG 25 03 11-85</u> or an <u>equivalent</u> <u>Designated construction project(s) general aggregate limit (only required for construction contracts)</u> Limits may be provided through a combination of primary and umbrella/excess liability policies. The	
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		CGL aggregate shall be endorsed to apply on a per project basis for construction Contracts. Policies shall include the State of New York as Additional Insured, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the DEPARTMENT. Any other insurance maintained by the DEPARTMENT shall be in excess of and shall not contribute with the CONTRACTOR'S or subcontractor's insurance, regardless of the “Other Insurance” clause contained in either party's policy of insurance.	
51.	Attachment 8, NY State Dept' of Health Contract, Section IV. – C. (4), NYSDOHC-Page 9:	Will the Department please consider amending Subsection 4 Commercial Automobile Liability as shown? Commercial Auto Liability insurance covering <u>bodily injury and/or property damage</u> liability arising out of the <u>CONTRACTOR'S</u> use of any motor vehicle in connection with the work, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least one million dollars and shall name <u>include</u> the State of New York as additional insured. The limits may be provided through a combination of primary and umbrella/excess liability policies. If this Contract involves the	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

		removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.	
52.	Attachment 8, NY State Dept' of Health Contract, Section IX. – E. (5), NYSDOHC- Page 15:	Section E Ownership Clauses, Subsection 5 identifies this Contract as a “work for hire contract.” Here, this contract is more akin to a services contract whereby the Contractor will be performing Level 2 Assessments. Will the State please consider modifying this Subsection 5 to protect Contractor’s proprietary systems and software that may be used to deliver services under this Contract? For example: 5. This is a “Work for Hire” Contract. The DEPARTMENT will be the sole owner of all source code and any software which is developed for use in any application software provided to the DEPARTMENT as a part of this Contract. To the extent that the services provided by the CONTRACTOR are generated by CONTRACTOR’S proprietary software or systems, nothing contained herein is intended nor shall it be construed to require CONTRACTOR to provide such software or systems to the DEPARTMENT. DEPARTMENT agrees that it has no claims of ownership, including copyright, patents, or other intellectual property rights to CONTRACTOR’s software or systems or any of CONTRACTOR’s licensor’s software or systems.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.

53.	Attachment 8, NY State Dept' of Health Contract, Section IX. – G., NYSDOHC-Page 16:	Section G Date/Time Warranty does not appear applicable to this scope of work as this RFP is not procuring Products. Rather this RFP is procuring Services. Can the Department please confirm that this Section G will not be applicable to this Contract and will be stricken from the final form?	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
54.	Attachment 8, NY State Dept' of Health Contract, Section IX – I. (3), NYSDOHC-Page 17:	Subsection 3 Termination for Non-responsibility allows the Department to terminate the Contract when the Department determines that Contractor is “non-responsible.” Will the Department please consider adding a notice and cure period to this provision? Termination (for Non-Responsibility): Upon <u>thirty (30) calendar days</u> written notice to the CONTRATOR, and <u>thirty (30) calendar day period</u> a reasonable opportunity to be heard with appropriate DEPARTMENT officials or staff <u>and to remedy/cure any issues raised</u>, this Contract may be terminated by Commissioner of Health or his or her designee at the CONTRACTOR'S expense where the CONTRACTOR is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.	The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, without modification, should the Department determine that that constitutes the best interests of New York State.
55.	Attachment 8, NY State Dept' of Health Contract, Section IX. – J., NYSDOHC-Page 17:	Will the Department please consider limiting Contractor's obligation to indemnify to third-party claims and proven direct damages as shown below? CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the DEPARTMENT from <u>third party claims</u> , suits, actions, and <u>resulting proven direct</u> damages and costs of	The Department is not considering this request.

		every name and description relating to personal injury and damage to real or personal tangible property and intellectual property, caused by any intentional act or negligence of CONTRACTOR, its agents, employees, partners or subcontractors, without limitation; provided, however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the DEPARTMENT.	
56.	Attachment 8, NY State Dept' of Health Contract, NYSDOH-Page 20:	Will the Department please consider adding a limitation of liability provision to the Contract in order to place a reasonable limit on Contractor's liability, as well as to exclude liability for indirect/consequential damages? For example: <u>Contractor's liability under the Contract for direct damages shall be the greater of the following (i) \$1,000,000.00, (ii) the dollar amount of the contract, or (iii) two times the charges rendered by the Contractor under the Contract and including any amendments. Unless otherwise specifically enumerated herein, neither party shall be liable to the other for special, indirect, or consequential damages, even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.</u>	The Department is not considering this request.