

**New York State Department of Health
Office of Primary Care and Health Systems Management
New York State Donate Life Registry
RFP No. 15697
September 26, 2014**

Please see Amendment 1, posted on September 26, 2014, which provides that:

The Proposal Due Date of October 10, 2014 at 4:00PM ET as stated in the Schedule of Key Events in the above referenced RFP # 15697 is hereby modified and changed.

The new Proposal Due Date is October 17, 2014 at 4:00PM ET.

Responses to Written Questions

Question 1:

Section 2: General Information (Table 2), p.5: While we appreciate that the maximum amount of State funding will be subject to annual appropriation and that bidders should not presume that additional state resources might be available, we were surprised the RFP states that a bidder would be disqualified if it were to request more than the specified maximum amount of State funding over the five year period. We presume this does not preclude the successful bidder from seeking additional state support during the course of the contract, but would request your confirmation that this assumption is correct. In addition, does this prohibition on requesting additional state support apply to funding from the State's "Life Pass It On Trust Fund," which was amended this year to allow for funds to be used "to support the maintenance and operation of the donate life registry" as well as for "grants to not-for-profit corporations in this state which are incorporated for the purpose of increasing and promoting organ and tissue donation awareness"?

Answer 1:

The total funds outlined in Table 2 of Section 2 (General Information) represent the maximum amount of state funding available for this project for each projected year and therefore bids requesting more state funding than is available cannot be considered. Similarly, the successful bidder should not expect to seek additional State funding during the course of the contract, unless additional funding is appropriated in a future state budget for such purpose or if the contributions received by the Life Pass It On Trust Fund for maintenance and operations of the NYSDLR exceed current estimates. Proposals submitted under this RFP should assume that

there will be no such additional state funding and should demonstrate how the bidder would achieve the RFP requirements with the level of state funding as set forth in Table 2.

Question 2:

Section 3, Project Scope (a), p.7: The Department reserves the right to approve or reject key personnel (project leadership). Can the Department clarify which personnel might be regarded as “key” or “project leadership” and what criteria would be employed in its rejection or approval of the contractor’s personnel?

Answer 2:

Section 3 (Detailed Specifications) provides that the Department reserves the right to approve or reject key personnel (project leadership) who may have responsibility for the NYSDLR project. As outlined in Section 4.1.3.2 (Staffing and Training) the bidder should demonstrate the ability to obtain and train a sufficient number of staff with the experience and expertise to fulfill the NYSDLR contract deliverables as set forth in Section 3. “Key personnel (project leadership)” refers to the person(s) who are assigned by the Contractor with the responsibility of assuring completion of contract deliverables. Approval or rejection of such personnel will be within the discretion of the Department and will be based on factors indicating whether the individual(s) are likely to carry out such responsibilities successfully, such as experience on past similar projects and performance in carrying out responsibilities under this project.

Question 3:

Section 3, Project Scope (b), p.7: The RFP would require every “project participant” to sign a confidentiality and non-disclosure agreement with the department. Can the department provide a definition or description of who would be considered a “project participant”?

Answer 3:

Paragraph (b) of Section 3 (Detailed Specifications), Project Scope, provides that every “project participant” will be required to sign a confidentiality and non-disclosure agreement with the Department. Once the contract is awarded, the Department would require the Contractor to develop and enforce a confidentiality agreement for all staff of the Contractor and any subcontractor(s) associated with the NYSDLR.

Question 4:

Section 3.1.1 (f): The RFP is requiring that written notice of registration be sent to the person registering and, where electronic contact information is unavailable or electronic notice is undeliverable, that such notice be accomplished through the United States Postal Service. Because email information is not obtained by the Department of Motor Vehicle (DMV) from persons who register at DMV offices, this requirement would necessitate a large volume of

letters to be sent to registrants at a cost we estimate in excess of \$200,000 annually – a significant percentage of the overall funding available for this RFP. Would the Department consider the notice provided by the DMV at registration of the person’s enrollment in the registry to satisfy this requirement? Would the Department be prepared to work with DMV to request email information from registrant to facilitate a far more cost-effective notice of registration? Alternatively, if this mailing is required, would the department consider the cost of the mailing to be outside of the funds available for this RFP and funded by other state resources? In addition, please clarify what is meant by the requirement that “Notice of registration to registrants must be provided on at least a weekly basis.” Does this require that the notice be sent within a week of the date when the person has registered?

Answer 4:

Public Health Law (PHL) § 4310 requires that registration in the NYSDLR will only be effective upon written or electronic notification of the registration to the individual enrolling. Since the law specifically articulates this, receipt provided at the DMV is not considered notification under PHL § 4310. Email information is not available from DMV, and paragraph (f) of Section 3.1.1 (Business Requirements) requires that the Contractor send enrollment letters on a weekly basis in order to process all enrollment requests received by the NYSDLR that week, so that enrollments are processed in a timely manner. The funding provided in the RFP is for all administration and operations of the NYSDLR, including notification; there is no additional funding for this function.

Question 5:

Section 3.1.1 (n): Can the Department clarify which variables can be used to reduce duplicates in the registry?

Answer 5:

Paragraph (n) of Section 3.1.1 (Business Requirements) requires the successful bidder to conduct searches of the NYSDLR for matching registrant records for purposes of reducing duplicates. Client ID will be the variable that will be used for matching records for registrant data coming from NYSDMV. Otherwise, the matching will be performed using first name, last name and date of birth and NYSDMV Client ID, if provided.

Question 6:

Section 3.1.1 (r)(iv): Under the proposed terms the Contractor would only have access to the Registry data for “quality assessment and improvement, technical support and donor for services” – as opposed to the Department, which would access “for any purpose.” (3.1.1(r)(iii)). We would anticipate needing access to the registry data also for research purposes, aimed at identifying successful strategies to increase enrollment through the analysis of enrollment trends

and the assessment of the effectiveness of marketing/education campaigns. Would these purposes be considered within the permitted rationales for Contractor access to the registry?

Answer 6:

PHL § 4310(7)(b) provides that the contract shall include security measures to protect the integrity of identifiable data, when accessed by the entities identified in the statute for purposes identified in the statute. This includes access by the Contractor “only for purposes of quality assessment and improvement, technical support and donor services.” PHL § 4310(7)(c) provides that de-identified information may be accessed by the entities identified in the statute for the purposes of “analysis, promotion, education, quality improvement and technical support” for the NYSDLR. The paragraph further provides that the information contained in the NYSDLR “shall not be released to any person except as expressly authorized by this section, solely for the purposes so authorized.”

The proposed use of data for “research purposes, aimed at identifying successful strategies to increase enrollment through the analysis of enrollment trends and the assessment of the effectiveness of marketing/education campaigns” is promotional in nature and therefore falls within the scope of PHL § 4310(7)(c), meaning that the Contractor would be permitted to access de-identified data for such purposes but not identified data.

Question 7:

Section 3.1.2: Change orders are required for (any modification, addition or deletion to the work as described in this RFP and as set forth in the project plan.) Any change order would require negotiation and approval by the Department and approval by the Office of the State Comptroller. We would be concerned that this provision might impose an undue burden on the Contractor and that state agencies involved: could the provision apply only to “material” or “significant” modifications?

Answer 7:

The importance of the NYSDLR and the information contained therein mandates that any changes to the work required under the RFP and as set forth in the project plan be brought to the attention of the Department and be subject to the approval of the Department and the Comptroller, as required under Section 3.1.2 (Change Orders).

Question 8:

Section 3.1.3: The RFP would allow for “perpetual licensing” or proprietary technology. Can you clarify what would be contemplated by this provision? The provision also provides that the State will not pay for “third party technologies” and their related licensing requirements. Can you clarify what costs, in particular, the State would not be responsible for? Please clarify what “third party technology” may be regarded as “standard IT environment technology.”

Answer 8:

Section 3.1.3 (Additional License and Ownership Rights) provides that to protect vendor intellectual property rights for proprietary technology, the Department is willing to consider perpetual licensing in place of ownership.

Any technological solution which is developed or modified by the bidder or any of its subcontractors to create the NYSDLR constitutes proprietary technology. Perpetual licensing of that proprietary technology would provide the Department with the unlimited use of such technological solution for the purpose of operating and maintaining the NYSDLR in perpetuity.

Section 3.1.3 provides that if a bidder is uncertain whether a third party technology included in its proposal is considered by the Department to be “standard IT environment technology,” it should ask for clarification from the Department during the questions and answers period. The section further provides that some proposed solutions may incorporate third party technologies which have associated licensing requirements, and such third party technologies and their licensing requirements, including costs, must be documented in the proposal and will not be paid by the State.

The question does not identify any particular third party technology that it is anticipating to use and the Department therefore cannot answer as to whether such technology constitutes “standard IT environment technology.” “Third party technology” refers to a technological solution that is purchased, either off the shelf or through a contractual agreement with a subcontractor, and has been developed and/or will be customized for the purposes of this RFP. While such third party technologies may be used, provided that all other requirements pertaining to technical solutions as set forth in the RFP are satisfied, the Department must be provided with perpetual licensing: the unlimited use of such technologies for NYSDLR maintenance and operational purposes in perpetuity.

If proprietary technology is developed or modified by the Contractor or a subcontractor or if the Contractor or a subcontractor proposes to use a third party technology, the technology must be made available to the Department for all purposes related to the operation and maintenance of the NYSLR in perpetuity. All costs associated with the bidder’s technical solution must be included in the overall cost of the proposal, and the Department will not pay any to obtain perpetual licensing or incur any other costs associated with the use of such licensing, such as for training.

Question 9:

Section 3.1.4(b): Please clarify what “software assets” may be required to be turned over to the State or the successor vendor in the event the contract is terminated.

Answer 9:

Pursuant to Section 3.1.4 (Registry Transition/Turnover), the State requires that all software assets developed and paid for under the contract be turned over to the State or successor vendor at the end of the contract in their entirety, regardless of what tools were used to create and manage them. If a bidder is proposing to use open-source code and software and therefore will not be using proprietary software, and can assure the Department that it will be able to continue using the bidder's proposed technical solution in the event of the Contract's termination, then there would be no software assets to turn over in the event of such termination. Any software which is developed or modified by the bidder or any of their subcontractors to create the NYSDLR technological solution would constitute software assets that may need to be turned over upon termination.

Question 10:

Section 3.3(i): The RFP requires the Contractor to submit weekly, monthly, quarterly and annual reports on various matters. The statute governing the registry requires only an annual report (PHL § 4310(3)(d)) and, while some additional reporting may be appropriate, would the Department consider a more limited set for reporting requirements in order to avoid unnecessary administrative expense for both the Contractor and the Department? With respect to the timing of these reports, and as noted above, please clarify how the reporting time periods would be calculated with respect to the projected December 1st start date.

Answer 10:

As set forth in Sections 3.2.2 (Open Issues) and 3.3 (Administration and Operational Support), the RFP requires weekly, monthly and annual reporting. While PHL § 4310 requires annual reporting, it also permits the Department the discretion to impose in the contract additional terms and conditions as appropriate and to require that the Contractor to carry out additional duties beyond those specified in PHL § 4310(3). Additional reporting beyond the annual report required by statute is important to ensure that the NYSDLR is operated and maintained as necessary to serve the overall objectives of the statute. Further, in regard to the education and marketing reporting requirements, the Contractor must submit all media buys to be reviewed and approved by Department prior to execution. In addition, pursuant to Sections 3.4 (Education and Marketing), all evaluations of marketing campaigns should be conducted and shared with the Department monthly and at the end of campaign. The contract will identify the deadlines for reporting, but it is anticipated that the first annual report will be due approximately one year after the contract start date.

Question 11:

Section 3.3.1(c): The Contractor is required to use and to pay for the Department’s translation services. If applicable, will the Contractor have access to the translated content currently being used by the Department for the NYSDLR? Can the Department provide an estimate of what the cost of the Department’s translation services are likely to cost?

Answer 11:

If applicable, the Contractor will have access to existing translated materials. The Department recently obtained translation of a brochure into seven languages, which cost approximately \$2,000, but the cost of translations will vary depending on content.

Question 12:

Section 3.3.3(a): The RFP requires Department approval of “all content and graphics” utilized on the NYSDLR website. Could this requirement be modified to require approval over significant or material content but not be required for minor refinements of the website?

Answer 12:

No, as set forth in paragraph (a) of Section 3.3.3(Website Development and Maintenance), all website content and graphics must be reviewed and approved by the Department.

Question 13:

Section 3.4: We appreciate the importance of increasing knowledge of New Yorkers regarding organ, eye and tissue donation and, even more importantly, to expand registration in the NYSDLR. To understand and to calculate whether the objectives set forth in the RFP are satisfied, please clarify how the baselines on which the various ambitious increases would be calculated. Are the increases measured based on an increase over the year one baseline or are they intended to reflect year to year increases? The [questioner] and its affiliated organizations, which include the organ procurement organizations, Tissue and Eye Banks in New York State, collectively spend close to \$2 million on marketing. Due to the unique make-up of populations in each region, tactics, messaging and media buying continue to be managed by region and [questioner] member. [Questioner], however, would move to one call-to-action throughout all regions (e.g. “sign-up today @ xyz.com”). Do the requirements of the RFP prohibit such an approach?

Answer 13:

Yes, the expected increases set forth in Section 3.4 will be measured in relation to the year one baseline. For example, paragraph (c) identifies the objective of increasing visits to the NYSDLR website by 10% in Year 2 and 25% in Years 3 through 5. The 25% increase to be achieved in

Year 3 is 25% over the number of visits in Year 1. The same increase would be sought in Year 4 and again in Year 5.

The inclusion of marketing activities conducted by regional affiliated organizations in a bidder's proposal or in the Contractor's proposed marketing campaign are not prohibited but must be consistent with and support the statewide marketing efforts and the media buy proposed by the Contractor. As set forth in paragraph (b) of Section 3.4, the media buy for an annual statewide marketing campaign must be reviewed and approved by the Department prior to execution. In reviewing a proposed marketing campaign, the Department would require a single call-to-action as well as consistent branding (messages, logos) for the NYSDLR.

Question 14:

Section 4.1.1: The section notes that the transmittal letter may be single-spaced, but we have been unable to find any reference elsewhere in the RFP to spacing requirements of other materials as part of the RFP. Apart from the transmittal letter, are there spacing requirements for any other elements of the RFP?

Answer 14:

Other than the transmittal letter, as noted, there are no spacing requirements for RFP responses.

Question 15:

Sections 4.1.5 and 4.1.6: Both of these provisions note that materials contained in various appendices will "not count toward page totals." We did not note any limitations specified on "page totals" elsewhere in the RFP. Are there any page totals with which we should be concerned?

Answer 15:

There are no limitations on page totals for RFP responses.

Question 16:

Section 4.1.6: The RFP contemplates "radio and TV spots," digital media, and out-of-home media. Specific marketing vehicles are typically determined after a target audience is identified, subject to a careful analysis of what the marketing budget will allow. Will the Contactor be permitted to eliminate/replace the above-referenced media options based on what is most appropriate and effective for the target audiences, as well as budget considerations? In addition, Section 4.1.6 requires the submission of "final printed examples of education materials and statewide marketing campaigns." Does the RFP contemplate submission of materials that have

been used for other campaigns or is it expecting submission of “final” materials related to the prospective NYSDLR campaign?

Answer 16:

Section 4.1.6 (Education and Marketing) requires each bidder to provide a plan with clear milestones to successfully address all the components in Section 3.4 (Education and Marketing), and to include in an appendix, final printed examples of education materials and statewide marketing campaigns. The marketing campaign examples should include marketing and media plans as well as samples of radio and TV spots, screenshots of digital media, photos of out-of-home media and any other collateral materials. Section 3.4(b) provides that the successful bidder must research, design and execute a media buy for an annual statewide marketing campaign to promote the NYSDLR, which must be reviewed and approved by the Department prior to execution.

The Contractor will have flexibility to propose a media campaign that includes some or all of the media options referenced in Section 4.1.6, but such campaign must be based upon the findings of the focus groups and identification of intended audiences and is subject to the approval of the Department.

As set forth in Section 4.1.6, final printed examples of education materials and statewide marketing campaigns should be related to the prospective NYSDLR campaign.

Question 17:

Attachment 10, page 76, second to last paragraph: If the Contractor maintains user authentication data internal to the registry, will the Contractor or its subcontractors be required to authenticate against the NY.gov ID and/or Health Commerce System?

Answer 17:

Attachment 10 (Security Requirements) provides that systems which require authentication will be expected to use NY.gov ID and/or Health Commerce System unless a specific requirement precludes use of these solutions and the use of another authentication solution is justified and documented. Accordingly, contractor and its subcontractors must authenticate against the NY.gov ID and/or the HCS unless the Contractor proposes and justifies proposes an alternative authentication solution that satisfies the business requirements set forth in the RFP and the alternative solution is reviewed and approved by the Department and ITS.

Question 18:

Attachment 14, section 1: The RFP states that the technical proposal must use widely accepted application technologies, which does include some open source operating environments and web servers as examples. Is PHP, an open source programming language, also considered a “widely accepted mainstream” technology?

Answer 18:

Yes.

Question 19:

Attachment 14, section 5(d): The RFP requires the delivery of “complete end user manuals and context-sensitive online help and instructions to appear on each screen.” In our view and the view of a proposed contractor with experience in operating registries in other states, complete end user manuals have not been required or perceived as necessary in the operation of donor registries. Does this require the provision of full documentation for the use of the administration system of the registry? And must it be provided prior to entering a contract with the Department?

Answer 19:

Section 5(a) of Attachment # 14 (Security Requirements) provides that the successful bidder must thoroughly document all technical and user aspects of the solution as it exists in its final state accepted by the Department. Section 5(b) provides that the successful bidder should deliver complete solution technical and design documentation, which should be a comprehensive description of all technical components of the NYSDLR “technical solution” solution. Section 5(c) provides that the successful bidder may be required to deliver complete system administration documentation. Section 5(d) provides that the successful bidder will be required to deliver complete end user manuals and context-sensitive online help and instructions to appear on each screen.

These provisions are intended to make sure that the Contractor provides documentation necessary for the Department and ITS to monitor the administration of the technical solution and assure that the Department, ITS and any successor Contractor to continue using the bidder’s proposed technical solution in the event of the Contract’s termination. Documentation in the form of end user manuals, online help and on-screen instructions are necessary solely for the purpose of assisting end users such as OPOs that are authorized to access the NYSDLR and the public, which may enter information into the NYSDLR. The aforementioned documentation and end user information need not be available prior to execution of a contract but must be available prior to commencement of the operation of the NYSDLR pursuant to the specific requirements included in the contract.

Question 20:

Attachment 14, section 7(d): The RFP requires that “Off-site backup copies must be stored in an ITS approved backup storage location for four (4) weeks with the oldest copy being rotated out weekly.” If the offsite backup vendor-located out-of-state-is not “ITS approved” but can demonstrate its capacity and experience to satisfy the Department’s requirements (and is utilized

by many other entities, including other state governments), would the Department regard the vendor as acceptable for these purposes?

Answer 20:

Attachment # 14 (Technical Proposal Requirements for NYSDLR Narrative), Section 7.c, provides that backup copies must be made every four weeks and stored in a backup storage location approved by ITS, and the backups must be transferred to ITS or the contract successor upon contract completion, at the direction of the Department. Due to the importance of the information maintained in the NYSDLR and the necessity that the Department and ITS be able to secure backup copies periodically and upon contraction completion, ITS will not approve backup storage locations that are located out of state.

Question 21:

Attachment 14, section 8(c):

The RFP requires the design of a “capability to switch operations from the production environment to the failover environment in the event technical problems incapacitate the production server within the Department’s required RTOs/RPOs.” We are unaware of any state that requires a similar secondary system to be in place and our proposed system sub-contractor estimates that the establishment of a secondary network would pose an unnecessary and substantial expense? In the event that the Contractor and its subcontractors may be able to build multiple layers of redundancy into the proposed production environment, would a full production failover environment still be required?

Answer 21:

Attachment # 14 (Technical Proposal Requirements for NYSDLR Narrative), Section 8, provides that the successful bidder must provide a failover component with immediate failover capability and design the capability to switch operations from the production environment to the failover environment in the event technical problems incapacitate the production server within the Department’s required RTOs/RPOs. The importance of maintaining the security of the information in the NYSDLR as well as the ability of authorized users to access such information necessitates that the Contractor provide the failover capabilities as set forth in the RFP.

Question 22:

Appendix J, section 7:

The RFP requires the contractor to establish an escrow account to ensure that the Department has the ability to purchase licenses for any proprietary software used in the technical solution. Our technical solution will only utilize open-source code and software, which does not have any licenses that the Department would need to purchase. Will the Contractor still be required to

maintain an escrow account if all of the associated software and code is open source and available to the Department at no cost?

Answer 22:

Appendix J (Additional Contract Clauses), Section 7.2 provides that the proprietary software of the Contractor and all subcontractors and suppliers proposed for installation must be available to the Department for its use for the entire Contract period, for any extensions the Department may choose to exercise and for any extended license terms the Department may choose to exercise after termination of the Contract. The Contractor must provide an escrow account to assure the Department of its ability to continue to use the proprietary software should the original Contractor and/or copyright holder no longer be in a position to guarantee such access.

If a bidder is proposing to use open-source code and software and therefore will not be using proprietary software, and can assure the Department that it will be able to continue using the bidder's proposed technical solution in the event of the Contract's termination, then no escrow account would be required. However, should the Contractor change its technical solution (which, as set forth in Section 3.1.2 of the RFP, can be accomplished only with the approval of the Department and the Office of the State Comptroller) in a manner that requires the use of proprietary software, then an escrow account would be required.

Question 23:

Appendix J, section 7:

Does the escrow account need to cover any systems or software utilized by the contractor that are not part of the technical solution?

Answer 23:

No. The escrow account is applicable only to any systems or software that are essential to the operation and functioning of the technical solution.