

New York State Department of Health
RFP#-16501
Rate and Fiscal Management Consultant
Questions and Answers
March 25, 2016

Question #	Corresponding RFP Section	Bidder's Question	Answer
1.	General	Please provide a copy of the current contract.	Please submit a FOIL request. Information for submitting FOIL requests can be found at: https://www.health.ny.gov/regulations/foil/howto.htm .
2.	General	Please provide scoring worksheets for the previous award.	Please submit a FOIL request. Information for submitting FOIL requests can be found at: https://www.health.ny.gov/regulations/foil/howto.htm .
3.	General	Please provide incumbent vendor billing by deliverable for the most current two years.	Please submit a FOIL request. Information for submitting FOIL requests can be found at: https://www.health.ny.gov/regulations/foil/howto.htm .
4.	General	Who are the current MBE and WBE vendors supporting this contract?	There is no MWBE goal on the original contract. This contract was procured prior to MWBE goal setting under New York State Executive Law Article 15-A.
5.	General	Is there an incumbent vendor for all or part of the scope? If so, for which part of the RFP scope and what is the current contract value of the scope?	The incumbent was contracted to for work in the following contract: https://www.health.ny.gov/funding/rfp/inactive/0902131116/ . For the value of the contract, please submit a FOIL request. Information for submitting FOIL requests can be found at: https://www.health.ny.gov/regulations/foil/howto.htm . For the full value of the contract please view: http://www.openbooknewyork.com/
6.	General	Does DOH desire to have the signing actuary(ies) for each annual Managed Care rate package and all rate package modifications be an employee(s) of the prime contractor? Does DOH desire that actuaries assigned	Yes, the Department anticipates that the signing actuary(ies) for each annual Managed Care rate package and all rate package modifications be an employee(s) of the prime contractor.

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		to the Core and/or on-site Analytic teams be an employee of the prime contractor?	Yes, the Department anticipates that the actuaries assigned to the Core and/or on-site Analytic teams be an employee of the prime contractor.
7.	Section 2.1 Introductory Background, Subsection B.2 Service Based Payment Programs (pages 5-6)	Does complete and detailed (unit cost, utilization, etc.) FFS data exist for each of the Service Based Payment Programs?	Yes, complete and detailed (unit cost, utilization, etc.) FFS data is available for each of the Service Based Payment Programs. Due to PHI restrictions, this information cannot be provided at this time and will only be provided to the winning contractor.
8.	Section 3.0: Scope of Work (pages 7-23)	For each program, please indicate which State Fiscal Year or Calendar Year DOH expects to be the first contract period for which an annual Managed Care rate package will be developed under this Scope of Work.	DOH currently anticipates the following State Fiscal Year/Calendar Year periods to be the first period for which an annual Managed Care rate package will be developed: MLTC Partial Capitation – State Fiscal Year 17-18 PACE – State Fiscal Year 17-18 MAP – Calendar Year 17 MA – Calendar Year 17 HIV/SNP – State Fiscal Year 17-18 HARP – State Fiscal Year – 2017-18 Essential Plan – Calendar Year 2018 FIDA – State Fiscal Year 17-18 IDD-FIDA—Calendar Year 2018 DISCO - TBD
9.	Section 3.1: Performance Standards/ Expectations, Subsection A. Methodology (page 8)	Is the successful bidder expected to run the risk adjustment models and calculate each MCO's risk score used in rate setting and refine as needed? If so, how often are the risk scores expected to be updated?	Yes, the successful bidder will be expected to run the risk adjustment models and calculate each MCO's risk score used in rate setting and refine as needed. Risk scores are expected to be updated 1 to 5 times per year depending on the Managed Care Program
10.	Section 3.1: Performance Standards/ Expectations, Subsection A.1 Managed Care Programs (pages 8-12)	Are there any planned changes to the described rate methodologies for Mainstream or MLTC rate setting? For example, are there any plans to move toward encounter-based rate setting rather than reliance on MMCORs as the primary data source?	Currently, there are no planned changes to the described rate methodologies for Mainstream Managed Care and MLTC. The Department is currently exploring the use of encounter data as the primary source for rate setting.
11.	Section 3.1: Performance Standards/ Expectations, Subsection A. Methodology (pages 8-15)	Please indicate the total number of rates/rate ranges (number of plans x number of premium groups x number of regions) that may be included in rate packages for the DISCO program.	The Department does not currently have an estimate of number of rates/rate ranges, plans, or premium groups for the DISCO Program due to the newness of the program.

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12.	Section 3.1: Performance Standards/ Expectations, Subsection A.1.a MLTC Programs (page 11-14)	Will the successful bidder have access to the MLTC risk adjustment model logic and cost weights used for the risk adjustment methodology?	Yes, the successful bidder will have access to the MLTC risk adjustment model logic and cost weights used for the risk adjustment methodology.
13.	Section 3.1: Performance Standards/ Expectations, Subsection A.1.d & A.1.e (page 15)	What data is available and at what level of detail will the data be provided to the successful bidder in support of the rate setting for the FIDA-IDD and DISCO rate setting?	Complete and detailed (unit cost, utilization, etc.) FFS data is available to support FIDA-IDD and DISCO rate setting. Due to PHI restrictions, this information cannot be provided at this time and will only be provided to the winning contractor.
14.	Section 3.1: Performance Standards/ Expectations, Subsection B. Expectations (page 16)	Multiplying the number of plans, premium groups and regions across all managed care programs included in the Scope of Work suggests that the total number of rates/rate ranges to be developed each year could exceed 2,100. Can DOH provide an estimate of the number of hours that it has historically taken to complete an annual Managed Care rate package for each of the programs listed in the table on this page?	The Department does not currently have an estimate of hours for each Managed Care Program.
15.	Section 3.1: Performance Standards/ Expectations, Subsection B. Expectations (page 16)	For the six managed care programs, the table lists an anticipated number of annual modifications to original rate package. Do these figures represent the number of modifications to the rates after they are submitted to CMS?	The figures represent the estimated number of modifications to the original rate package which will require actuarial certification and/or submission to CMS.
16.	Section 3.2: Tasks (page 16)	Does the DOH expect that a full rebase of the base period data will be performed each year for each program?	Yes, the Department's expectation is a full rebase of base period data each State Fiscal/Calendar year for each Program unless otherwise specified by the Department.
17.	Section 3.2: Tasks, Subsection A.1 Capitation Rate Methodology Development and Determination (page 16)	Task 1.a asks the successful bidder to support the development of a risk adjustment methodology. In addition to the Essential Plan (EP), can the DOH please provide more detail on any other capitated program(s) where implementation or modification of a risk adjustment methodology is being considered?	It is anticipated that risk adjustment be incorporated into HARP and Essential Plan premium rate setting over the next 2 to 3 State Fiscal/Calendar Years.
18.	Section 3.2: Tasks, Subsection A.3 Interim Reporting and Other Deliverables for Rate Setting Functions (page 17)	Can the DOH please provide an estimate of the number of staff trainings that are anticipated for each of the managed care programs?	The Department estimates 1 to 2 Department staff trainings per year depending on each Managed Care Program's need.

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19.	Section 3.2: Tasks, Subsection A.3 Interim Reporting and Other Deliverables for Rate Setting Functions (page 18)	Can the DOH please provide an estimate of the number of MCO meetings, CMS meetings, and other stakeholder meetings that are anticipated for each of the managed care programs?	The Department estimates 3 to 5 meetings with MCO's, CMS, or other stakeholders per Managed Care Program per month.
20.	Section 3.2: Tasks, Subsection B.2 Policy and Financial Management Consulting Services, letter f (Page 19)	What software does New York currently use for dashboard reporting?	The Department and existing contractor utilize SAS, MS Excel, and an SQL query software for dashboard development.
21.	Section 3.2: Tasks, Subsection B.2 Policy and Financial Management Consulting Services (Page 19)	What programs and/or populations is the State's value based payment ("VBP") initiative(s) focused on?	Please consult the State's Value Based Payment Roadmap documentation for more information on Programs and populations. The Roadmap can be found at the following location: http://www.health.ny.gov/health_care/medicaid/redesign/dsrip/vbp_reform.htm
22.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection A., Location of Team (page 20)	Does DOH expect members of the Core team to be on-site full-time? Or is it expected the selected contractor will establish a physical space within 15 miles of DOH where the Core team will be located?	It is expected the selected contractor will establish a physical space within a 15 mile radius of Albany, where the Core team will be located. It is not required for this Core team to work on-site full time, but it is expected that they work out of their established physical space full time. This Core team should be readily available to meet and work directly with DOH as the need arises.
23.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection A., Location of Team (page 20)	Can the entire Core team work at One Commerce Plaza, Albany, NY or is there space only for the on-site analytic team?	The Department can only house the on-site analytic team at OHIP's offices at One Commerce Plaza. This does not prohibit the contractor to lease space from One Commerce Plaza for the Core team.
24.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection A., Location of Team (page 20)	Does the core team need to live within Albany, or may a contractor propose a dedicated team that works on-site at the Capitol building in Albany?	The core team does not need to live within Albany. The contractor may propose a dedicated team that works on-site at the Capitol building in Albany. Please see response to question #22.

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25.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection B.1, Staffing Requirements (Page 20)	Are firms or individuals who work for New York Medicaid health plans, Health Plan Associations or providers restricted from working on the projects included in the Scope of Work in this RFP?	No, firms or individuals who work for New York Medicaid health plans, Health Plan Associations or providers are not restricted from working on the projects included in the Scope of Work in this RFP.
26.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection B.2, Staffing Requirements (page 20)	In section 3.3 B on page 20 of the RFP the staffing requirements for the contractor are outlined. Section 1 describes the core team and notes that at least one member must be a certified actuary. Section 2 describes the on-site analytic team of -5 staff, of which at least one staff must be an actuary. Can the same actuary be used to fulfill the requirements for the core team described in section 1 and for the analytic team in section 2?	The on-site analytic team must contain an actuary. This person may also be the actuary requested as part of the core team.
27.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection B.2, Staffing Requirements (page 20)	Is there an expectation that the on-site core team constitute 3-5 people, or is the on-site core team considered to be above and beyond the 3-5 people required in 3.3.B.2?	As of now, the request for the on-site <i>analytic</i> team is for 3-5 people.
28.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection B, Staffing Requirements (pages 20-21)	Is it DOH's expectation that the Core team, as specified in subsection 1, and the on-site Analytic team, as specified in subsection 2, will be mutually exclusive? That is, are the individuals assigned to the Core team expected to be separate and distinct from the individuals assigned to the on-site Analytic team? If the Core team and on-site Analytic team are expected to be distinct from one another, can DOH confirm that they intend to have two actuaries located in the Albany, NY area as a part of the project team: one who is assigned to the Core team and another who is assigned to the on-site Analytic team?	Please see the answer to Question 26.
29.	Section 3.3: Staffing Requirements, General Contractor Duties,	Is the Core team separate from the on-site analytic team or can there be overlap?	These are two separate, distinct teams with the exception of the actuary. See Question 26.

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	Subsection B, Staffing Requirements (pages 20-21)		
30.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection B, Staffing Requirements (pages 20-21)	Is the requirement for on-site analytic team a new requirement or is it in the existing contract?	This is a new requirement.
31.	Section 3.3: Staffing Requirements, General Contractor Duties, Subsection B.2, Staffing Requirements (pages 20-21)	This indicates that the costs for the on-site Analytic team should be reflected in Part A of the Cost Proposal. Should DOH and the selected contractor decide that it makes sense to expand the on-site team beyond the 3 – 5 individuals specified in this section of the RFP, please confirm that the contractor would either have an opportunity to adjust the deliverable-based prices in Part A of the Cost Proposal or that work performed by such individuals would fall under Part B of the Cost Proposal.	It is currently anticipated that the on-site team will not require more than 5 individuals. The contractor will not be able to adjust the deliverable-based prices provided in Part A of their Cost Proposal or be able to bill at hourly rates for work beyond what is identified for Part B pricing of this RFP.
32.	Section 4.1: Minimum Qualifications (page 23)	In section 4.1 on page 23 of the RFP, the minimum qualifications for an organization to be a prime contractor are outlined. Does the prime contractor need to be a certified actuarial firm or do bidders need to have actuaries within the respective organization and/or project team?	The prime contractor does not need to be a certified actuarial firm nor does the firm need to have actuaries within the respective organization. The prime contractor must be able to meet the requirements of the RFP whether individually or with a subcontractor.
33.	Section 5.4: Payment, Subsection A (page 26)	Is the State open to monthly invoicing based on rate setting milestones rather than payment upon receipt of deliverable? In our experience the rate setting process starts almost immediately after the previous year's rates are submitted.	The State is not open to monthly invoicing based on rate setting milestones at this time.
34.	Section 5.4: Payment, Subsection F (page 26)	We request the following be deleted: "In the event of misunderstanding of any requirements, deliverables, or services to be provided; the Contractor shall make the necessary adjustments or corrections at no additional cost to the State."	The Department will not accept this change.

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35.	Section 5.4: Payment, Subsection G (page 26)	<p>We request the following modifications:</p> <p><u>"The Contractor shall, upon completion and Department approval of each deliverable, submit to Department a voucher for payment on such forms and in such detail as required. The Department will approve all deliverables (including all rate packages, Managed Care rates, and rate modifications) that materially conform to the applicable specifications. Any deliverable (including all rate packages, Managed Care rates, and rate modifications) not rejected by the Department in writing within thirty (30) days will be deemed to have been approved by the Department. All vouchers submitted by the Contractor shall be submitted to Department no later than sixty (60) days after the end of the monthly reporting period."</u></p>	The Department will not accept this modification.
36.	Section 5.5: Minority & Woman-Owned Business Enterprise Requirements	<p>Contemplates the payment of liquidated damages if Contractor has failed to comply with MWBE participation goals set forth in the Contract? Would the Contractor be required to pay liquidated damages if it has sought and received a waiver of these provisions?</p>	An approved waiver would not be deemed a willful and intentional failure.
37.	Section 5.5: Minority & Woman-Owned Business Enterprise Requirements	<p>We request the following modifications:</p> <p><u>"If the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding will constitute a breach of Contract and DOH may withhold payment from the Contractor as liquidated damages.</u></p> <p><u>Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract."</u></p>	The Department will not agree to this modification.

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38.	Section 5.18: Encouraging Use of New York Businesses in Contract Performance	<p>In completing Attachment H, how does a bidder indicate that they are a New York business? What is the definition of a New York business?</p> <p>Is the use of a New York business scored as part of the technical proposal?</p>	<p>If you are a New York State business you would answer yes and then identify yourself as that entity on Attachment H. A New York State business is a business which is a resident of New York State.</p> <p>The use of a New York business is not scored as part of the technical proposal.</p>
39.	Section 6.2: Technical Proposal Requirements, Subsection D.1 Organization and Personnel (page 36)	Would the DOH like bidders to provide resumes for our proposed personnel? If so, is it acceptable to include resumes as an Appendix within the Technical Proposal section?	The bidder may provide resumes for proposed personnel as an Appendix with the Technical Proposal Section.
40.	Section 6.3: Cost Proposal, Subsection A. (page 37)	This indicates that payments for all work related to the development and calculation of the annual Managed Care rates for the programs specified in Section 3.2, A., will be made once work is completed. Particularly for the larger, more complex programs with up to 32 participating health plans, calculation of annual Managed Care rates may be a 6+ month project. Would DOH consider allowing for periodic interim billing of a portion of the delivery-based payments?	DOH will not consider this request. Payment shall be made when work is completed and the supporting documentation and rate certification is submitted to DOH and approved by DOH.
41.	Section 6.3: Cost Proposal, Subsection A. (page 37)	This indicates that payment for all work related to the development and calculation of the annual Managed Care rates for the following programs (see Section 3.2, A) will be made once work is completed and the supporting documentation and rate certification is submitted to the department and approved. Please confirm that the term "approved" in this section refers to a determination by DOH that a complete rate package, including the accompanying documentation, has been provided to DOH by the contractor and not that CMS or another State or Federal agency has approved the rates associated with the rate package? We ask this because, based on recent experience, the CMS review/approval process has routinely taken 60 to 180 days.	The term "approved" in this section refers to a determination by DOH that a complete rate package, including the accompanying documentation, has been provided to DOH by the contractor and not that CMS or another State or Federal agency has approved the rates associated with the rate package.

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42.	Section 6.3: Cost Proposal, Subsection B (pages 37)	The last sentence of Section 6.3B at the bottom of page 37 provides examples of rate modifications (e.g., age, gender, etc.). Can the DOH please clarify the type and nature of the modifications anticipated for the rate setting deliverables? In addition, can the DOH please provide examples of rate modifications that have been previously made for the managed care programs?	The type and nature of rate modifications can be defined as adjustments to existing rates to reflect the impacts of any program, benefit, population, trend, or other changes resulting from Federal and/or State requirements or Department programmatic changes that will be effective in a given State Fiscal/Calendar Year, but not included in existing State Fiscal/CalendarYear rates.
43.	Section 6.3: Cost Proposal, Subsection B (pages 37)	In regards to the anticipated number of modifications made to the annual managed program rate packages, does each program change count as a single modification or could multiple program changes be grouped together as a single modification, if they result in a single revised rate certification?	If multiple program changes are identified and needed to be made at a particular time, they may be grouped together as one single modification to a Program rate package.
44.	Section 6.3: Cost Proposal, Subsection B (pages 37-38)	Can DOH provide guidance regarding what constitutes a "modification" to a rate package? Specifically, would updates to a rate package that do not require re-submitting a certification to CMS be considered a "modification" as defined in this section?	The Department considers all updates to a Program rate package which would require actuarial certification and/or submission to CMS as a "modification".
45.	Section 6.3: Cost Proposal, Subsection B (pages 37-38)	Please confirm that to the extent that it is necessary to re-open completed rate packages (e.g., to adjust for a program change enacted through the Executive Budget or to make adjustments related to Value-Based Payment arrangements), such work would fall under Part B of the Cost Proposal. We ask this because the level of effort required to re-open rate packages for has historically varied substantially based on the situation. Accordingly, it will be very difficult to estimate an average level of effort to include these costs in Part A of the Cost Proposal.	Any type of modification to a completed rate package falls under Part A of the Cost Proposal.
46.	Section 6.3: Cost Proposal, Subsection B (pages 37-38)	There is considerable variability in the size and scope of modifications to an original rate package. Additionally, it is foreseeable that circumstances could arise that require more or less than the anticipated number of modifications to any given program given	No, modifications to the original rate package will be billed on a deliverable basis.

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		the dynamic nature of New York's Medicaid program. Would the State consider allowing modifications to original rate packages to be priced on an hourly basis to address this issue?	
47.	Section 8.3: Technical Evaluation (page 40)	Can the DOH please provide more detail on the scoring components and/or evaluation priorities that are used to develop the raw technical score for each bidder?	The bidders shall be evaluated upon their competency and capacity to carry out the requirements of this RFP as part of their technical proposal, outlined in Section 6.2.D. The evaluation of the items listed in this section will be used to derive their total raw score.
48.	Section 8.3: Technical Evaluation (page 40)	The Scope of Work in this RFP includes a broad array of rate-setting, fiscal management and other activities. Will the Technical Evaluation Committee weigh more favorably the experience of a bidder that is specific to New York Medicaid programs and populations than the experience of a bidder that does not have the same level of familiarity with New York Medicaid programs and populations?	Please see answer to Question 47 above.
49.	Section 8.3: Technical Evaluation (page 40)	Can the State share any scoring worksheets that show how the breakdown of the technical proposal is evaluated?	This information is not available to bidders.
50.	Section 8.3: Technical Evaluation (page 40)	Does the use of a Minority-owned Business Enterprise (MBWE) affect points scored in the technical evaluation?	No, the use of a MWBE in comparison to a non-MWBE does not affect points scored in the technical evaluation. However in the event of a tie, the determining factors for award, in descending order, will be: (1) lowest cost, (2) proposed percentage of MWBE participation, and (3) Past Experience.
51.	Section 8.4: Cost Evaluation (page 40)	The table provided in Section 3.1, B, Expectations, indicates that the number of modifications to original rate packages that are anticipated to occur will vary from year-to-year. For purposes of evaluating the Part A of the Cost Proposal, how many rate modifications will DOH assume for each program?	An anticipated number of annual modifications to each original rate package is included in the table, found in Section 6.3.A (page 37) of the RFP.
52.	Attachment A: Bidder's Certified Statements	Is there flexibility in allowing respondents to list exceptions to certain parts of the RFP?	As stated in Section 2.2 Important Information, any qualifications or exceptions proposed by a bidder to this

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			RFP should have been submitted in writing using the process set forth in Section 5.2 (Questions) prior to the deadline for submission of written questions.
53.	Attachment B: Proposal Document Checklist (page 45)	The checklist refers to "Appendix D – Disclosure of Non-Responsibility Determinations, completed and signed." The only Appendix D in the response is the General Specifications associated with Attachment E, DOH Agreement. Can DOH either provide the required Appendix D or advise where the form may be located?	Appendix D is incorrect. The correct document to be included is Attachment G.
54.	Attachment C: Cost Proposal (page 46)	For each of the managed care programs shown in the table on page 46, can the DOH please provide the incumbent's historical fees, hours, and mix by staff level, or an estimate of the anticipated fees, hours, and mix by staff level for future support, for work related to the annual rate development and rate modifications.	<p>The Department does not have a breakdown of historical fees or hours devoted to each managed program at this time.</p> <p>Historically, a rough percentage breakdown of staff levels for each Managed Care Program are as follows:</p> <p>Mainstream Managed Care:</p> <ul style="list-style-type: none"> • Level 1: 25% • Level 2: 27% • Level 3: 48% <p>HIV/SNP</p> <ul style="list-style-type: none"> • Level 1: 5% • Level 2: 15% • Level 3: 80% <p>HARP:</p> <ul style="list-style-type: none"> • Level 1: 35% • Level 2: 32% • Level 3: 33% <p>MLTC Partial Cap:</p> <ul style="list-style-type: none"> • Level 1: 25% • Level 2: 27% • Level 3: 48% <p>PACE:</p> <ul style="list-style-type: none"> • Level 1: 25% • Level 2: 27% • Level 3: 48%

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			<p>MAP:</p> <ul style="list-style-type: none"> • Level 1: 25% • Level 2: 27% • Level 3: 48% <p>FIDA:</p> <ul style="list-style-type: none"> • Level 1: 37% • Level 2: 26% • Level 3: 37% <p>MA:</p> <ul style="list-style-type: none"> • Level 1: 25% • Level 2: 27% • Level 3: 48% <p>Essential Plan:</p> <ul style="list-style-type: none"> • Level 1: 22% • Level 2: 22% • Level 3: 56%
55.	Attachment C: Cost Proposal (page 46)	<p>To the extent that the scope of a delivery-based payment project changes materially during the contract period, would the out-of-scope work be billed on an hourly basis? Or would the contractor have an opportunity to adjust the deliverable-based prices in Part A of the Cost Proposal? For example, not all of the managed care programs described in this Scope of Work currently includes a risk adjustment component. If DOH wishes to implement risk adjustment for any of these programs, the delivery-based prices reflected in the Cost Proposal of this response are unlikely to be adequate to cover such an expansion of scope.</p>	<p>Department does not anticipate adjusting the Cost Proposal without a formal amendment to the resulting contract, if the need does arise.</p> <p>The contractor cannot bill for work that is not within the scope of the contract.</p> <p>If DOH wishes to implement risk adjustment for any of the programs that are listed under Scope of Work, the work would be considered in scope as outlined in Section 3.2.</p>
56.	Attachment C: Cost Proposal (page 46)	<p>This hourly based pricing cost proposal states that hourly rates are to be held firm for years 1-3.</p> <p>However, Section 5.4, the RFP states, "Payment Price Adjustment Clause: The pricing for years four (4) and five (5) of the contract is subject to an annual increase or decrease of the lesser of three percent (3%) or the</p>	<p>Rates are held firm for the first three years with no annual adjustment. The pricing for years four (4) and five (5) of the contract is subject to an annual increase or decrease of the lesser of three percent (3%) or the percent increase or decrease in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 20212 for the</p>

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		<p>percent increase or decrease in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 20212 for the 12 month period ending ninety (90) days prior to the renewal date for years four (4) and five (5) of the contract.”</p> <p>Please confirm that rates are held firm for the first three years with no annual adjustment but that adjustments will only be made for years 4 and 5.</p>	<p>12 month period ending ninety (90) days prior to the renewal date for years four (4) and five (5) of the contract.</p>
57.	Attachment E: DOH Agreement	<p>1. Is the State willing to add a limitation of liability provision to the State of New York Agreement that would include language substantially similar to following?</p> <p>a. The aggregate liability of Contractor, its Affiliates and any officer, director or employee of Contractor and its Affiliates (“Contractor Parties”) to the State, its officers, directors or employees or those of State’s Affiliates and any third party (including any benefit plan, its fiduciaries or any plan sponsor) for any and all Losses arising out of or relating to the provision of any Services at any time by any of the Contractor Parties shall not exceed the greater of one times the Compensation for the Services giving rise to such Loss. Contractor shall have no liability for the acts or omissions of any third party (other than its subcontractors).</p> <p>b. In no event shall either Party or its Affiliates be liable in connection with this Agreement or the Services to the other Party, its Affiliates or any third party for any loss of profit or incidental, consequential, special, indirect, punitive or similar damages. The provisions of this Section shall apply to the fullest extent permitted by law. Nothing in this Section</p>	<p>The Department will not agree to this addition.</p>

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		<p>limiting the liability of a Party shall apply to any liability that has been finally determined by a court to have been caused by the fraud of such Party.</p> <p>c. For purposes of this Agreement "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss."</p>	
58.	Attachment E: DOH Agreement, Appendix A: Standard Clauses for NYS Contracts, Subsection 16.	<p>We request this section be deleted and replaced with the following:</p> <p>"16. ARBITRATION. In the event of any dispute arising out of or relating to the engagement of the Contractor by the State, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third</p>	No. We cannot entertain any alterations of Appendix A, the Standard Clauses for New York State Contracts as promulgated by the Office of the Attorney General of the State of New York.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties,</p>	
59.	Attachment E: DOH Agreement, Appendix X, Section III.C	Will the DOH consider modifying this section to incorporate the concept of materiality into the termination provision?	<p>As part of the Transmittal Letter, bidders are required to certify that they accept the contract terms and conditions as set forth in the RFP. NYSDOH 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 as set forth in the RFP without modification should NYSDOH determine that that constitutes the best interests of New York State.</p>
60.	Attachment E: DOH Agreement, Appendix X, Section V	Will the DOH consider changes to the indemnity which have been acceptable and agreed to by many other NY State agencies such as limitations to damages for third party claims for (a) bodily injury and physical damage to real or personal property to the extent directly and proximately caused by the vendor, and (b) certain infringements by the deliverables of third party intellectual property rights?	Please see answer to Question #59.

Question #	Corresponding RFP Section	Bidder's Question	Answer
61.	Attachment E: DOH Agreement, Appendix X, Section V	As with many other NY State contracts, will the DOH consider adding a commercially reasonable limitation of liability, including a disclaimer of indirect, special and consequential damages?	Please see answer to Question #57.
62.	Attachment E: DOH Agreement	<p>Is the State willing to add a severability provision to the State of New York Agreement that would include language substantially similar to following?</p> <p>“It is the intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted or interpreted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement as modified, enforceable and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.”</p>	Please see answer to Question #59.
63.	Attachment E: DOH Agreement, State of New York Agreement, Section III	<p>We request the following modifications:</p> <p>“C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to <u>materially</u> comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall <u>first</u> give the contractor written notice <u>and an opportunity to cure such failure</u> via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to <u>specify detail</u> the Contractor's failure <u>and the</u></p>	Please see answer to Question #59.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>termination of this Agreement. Termination shall be effective <u>If the Contractor fails to cure such failure within ten (10) business days from receipt of such notice, established by the receipt returned to the Department, the Department may terminate the Agreement immediately upon notice to the Contractor.</u> The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.</p> <p>D. This Agreement may be deemed terminated immediately <u>upon notice</u> at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.”</p>	
64.	Attachment E: DOH Agreement, State of New York Agreement, Section V.A	<p>We request this section be deleted and replaced with the following:</p> <p>“The CONTRACTOR shall be fully liable for the actions of its agents, employees, partners, or Subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages, and costs of 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</p>	Please see answer to Question #59

Question #	Corresponding RFP Section	Bidder's Question	Answer
		damage arising hereunder due to the negligent act or failure to act of the STATE.”	
65.	Attachment E: DOH Agreement, State of New York Agreement	<p>We request the following be added to the agreement:</p> <p>“VI. Limitation of Liability</p> <p>In the event of any claim arising from services provided by the CONTRACTOR at any time, the total liability of the CONTRACTOR, its officers, directors, agents, and employees to the STATE shall not exceed five million dollars (\$5,000,000). This limit applies regardless of the theory of law under which a claim is brought, including negligence, tort, contract, or otherwise. In no event shall the CONTRACTOR be liable for lost profits of the STATE or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the gross negligence, intentional fraud, or willful misconduct of the CONTRACTOR, or for direct damages for personal injury, death, or damage to real property, tangible personal property, or intellectual property attributable to the negligence or other tort of the CONTRACTOR, its officers, directors, agents, or employees.”</p>	Please see answer to Question #57.
66.	Attachment E: DOH Agreement	<p>Is the State willing to revise Section BB. “Provisions Related to New York State Information Security Breach and Notification Act” of Appendix D General Specifications, as follows?</p> <p><u>“In connection with the performance of the Services under this Contract, CONTRACTOR shall comply with the provisions of the New York State</u></p>	Please see answer to Question #57.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if <u>to the extent</u> caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors, <u>except to the extent such actions were undertaken at the express written direction of the State.</u>"</p>	
67.	Attachment E: DOH Agreement	<p>Is the State willing to add a no third party beneficiaries provision to the State of New York Agreement that would include language substantially similar to following?</p> <p>"Neither this Agreement nor the provision of the Services is intended to confer any right or benefit on any third party, other than the Affiliates of each Party that execute a SOW, and, in such event, solely as set forth in such SOW and this Agreement. The provision of Services under this Agreement cannot reasonably be relied upon by any third party."</p>	Please see answer to Question #59
68.	Attachment E: DOH Agreement	<p>Is the State willing to add a jury trial waiver provision to the State of New York Agreement that would include language substantially similar to following?</p> <p>EACH PARTY, ON BEHALF OF ITSELF AND ITS AFFILIATES, TO THE FULLEST EXTENT PERMITTED</p>	No.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY CONTRACTOR OR ITS AFFILIATES. THE WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY AGREES NOT TO INCLUDE ANY EMPLOYEE, OFFICER, DIRECTOR OR TRUSTEE OF THE OTHER AS A PARTY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO SUCH DISPUTE.</p>	
69.	Attachment E: DOH Agreement	<p>Is the State willing to revise Section V. Indemnification of the State of New York Agreement as follows?</p> <p>“The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature <u>to the extent directly arising out of CONTRACTOR’s negligent acts or omissions or bad faith conduct in connection with CONTRACTOR’s</u> the provision of services pursuant to this AGREEMENT. <u>CONTRACTOR shall have no responsibility for any losses, liabilities or damages</u></p>	<p>Section V (J) will be revised as follows:</p> <p>“CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs of 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 STATE.”</p>

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p><u>to the extent they are attributable to the acts or omissions of an indemnified person or any third party other than CONTRACTOR's subcontractors."</u></p>	
70.	Attachment E: DOH Agreement, Appendix D General Specifications, Section C	<p>We request the following modifications:</p> <p>"The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof."</p>	The current language in the RFP meets the needs of the Department. This section will not be modified.
71.	Attachment E: DOH Agreement, Appendix D General Specifications, Section G	<p>We request the following modifications:</p> <p>"The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict material accordance with the specifications and pursuant to a contract therefore."</p>	The current language in the RFP meets the needs of the Department. This section will not be modified.
72.	Attachment E: DOH Agreement, Appendix D General Specifications, Section T	<p>We request the following modifications:</p> <p>"1. In the event that the CONTRACTOR, through any cause, <u>materially</u> fails to perform any of the terms, covenants or promises of this agreement</p>	Please see answer to Question #59.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p><u>within 10 business days of receiving notice thereof from the Department, including a description of such material failure</u>, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR.</p> <p>2. If, in the judgment of the Department of Health, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR. In such case 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 up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of such termination, subject to audit by the State Comptroller."</p>	
73.	Attachment E: DOH Agreement, Appendix D General Specifications, Section V	May a respondent provide a condition that the limitation of liability will be no more than the annual amount of the contract?	Please see answer to Question #57.
74.	Attachment E: DOH Agreement, Appendix D General Specifications, Section W.1	We request "changed or" be removed from the second sentence of the first paragraph of this Section.	Please see answer to Question #59

Question #	Corresponding RFP Section	Bidder's Question	Answer
75.	Attachment E: DOH Agreement, Appendix D	<p>Is the State willing to include the following provision in Section Y "Confidentiality Clauses" of Appendix D – General Specifications?</p> <p>"CONTRACTOR shall be permitted to retain copies of Confidential Information in accordance with its legal, disaster recovery and records retention requirements, but subject to its confidentiality obligations under the Contract."</p>	<p>NYSDOH would be willing to include this or similar language. NYSDOH will negotiate specific language with the contract awardee, within the scope of the RFP and in the best interests of New York State.</p>
76.	Attachment E: DOH Agreement, Appendix D General Specifications, Section Y.2	<p>We request the following be added to the second paragraph of this Section:</p> <p>"The CONTRACTOR retains all ownership rights in any proprietary methodologies, methods, processes, or procedures of the CONTRACTOR that pre-existed or were developed outside of the scope of this AGREEMENT. If any such property of the CONTRACTOR is contained in any of the deliverables hereunder, the CONTRACTOR grants to the STATE a royalty-free, paid-up, non-exclusive, perpetual license to such CONTRACTOR intellectual property in connection with the STATE's use of the deliverables."</p>	<p>Please see answer to Question #59.</p>
77.	Attachment E: DOH Agreement, Appendix D General Specifications, Section Y	<p>We request the following be added to Section Y (Confidentiality Clauses):</p> <p>"6. The CONTRACTOR's work is prepared solely for the use and benefit of the Department of Health in accordance with its statutory and regulatory requirements. The CONTRACTOR recognizes that</p>	<p>Please see answer to Question #59</p>

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>materials it delivers to the Department of Health may be public records subject to disclosure to third parties, however, the CONTRACTOR does not intend to benefit and assumes no duty or liability to any third parties who receive the CONTRACTOR's work and may include disclaimer language on its work product so stating. The Department of Health agrees not to remove any such disclaimer language from the CONTRACTOR's work. To the extent that the CONTRACTOR's work is not subject to disclosure under applicable public records laws, the Department of Health agrees that it shall not disclose the CONTRACTOR's work product to third parties without the CONTRACTOR's prior written consent; provided, however, that the Department of Health may distribute the CONTRACTOR's work to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use the CONTRACTOR's work product for any purpose other than to provide services to the Department of Health, or (ii) any applicable regulatory or governmental agency, as required."</p>	
78.	Attachment E: DOH Agreement, Appendix D, Sections C and T	Will the DOH consider adding a more objective standard on their review of the contractor's work, and also include a dispute right for the Contractor related to any remedies?	Please see answer to Question #59
79.	Attachment E: DOH Agreement, Appendix D, Section Y	Will the DOH be willing to adjust the Confidentiality Clauses to cover the contractors rights related to their intellectual property, and also to agree to protect contractor's confidential information?	Please see answer to Question #59

Question #	Corresponding RFP Section	Bidder's Question	Answer
80.	Attachment E: DOH Agreement, Appendix D	<p>Attachment E, DOH Agreement - Is the State willing to revise Section Y(5) "Confidentiality Clauses" of Appendix D – General Specifications as follows in order to make confidentiality obligations reciprocal?</p> <p>"The <u>Each of the Parties</u> CONTRACTOR, its and their respective officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York."</p>	Please see answer to Question #59
81.	Attachment E: DOH Agreement, Appendix D	<p>Is the State willing to revise Section Y(5) "Confidentiality Clauses" of Appendix D – General Specifications as follows?</p> <p><u>"Any publishable or otherwise reproducible material prepared by Contractor specifically and exclusively for the State developed under or in the course of performing this pursuant to the</u> AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is</p>	Please see answer to Question #59

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes <u>but shall not be given to or shared with anyone else, or used for any purpose, other than as contemplated by the Contract or as required by law. Contractor shall retain all of its rights in its own intellectual capital (such as methodologies, know how, models, tools, and any graphic or digitized representation of any of these) now possessed, or developed or acquired by Contractor during or after, the performance of the Services the same shall not be considered work product."</u></p>	
82.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality	Will the DOH agree to adjust this Appendix to incorporate changes to the obligations regarding HIPAA that have been agreed to by other NY State agencies?	This attachment is Department-wide approved language that adequately serves the Department's needs and protects the Department's interest.
83.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section II., letter A	<p>We request the following modification:</p> <p>"Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT, <u>as requested by Covered Program</u>, or as Required By Law."</p>	Please see answer to Question #82 above.

Question #	Corresponding RFP Section	Bidder's Question	Answer
84.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section II., letter D	<p>We request the following modification:</p> <p>“Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to <u>substantially</u> the same restrictions and conditions that apply to Business Associate with respect to such information.”</p>	Please see answer to Question #82 above.
85.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section II., letter I	<p>Is DOH willing to change the language to read as follows: “Business Associate agrees to make internal practices, books, and records..... available to Covered Program to the extent such release does not jeopardize the integrity of Business Associate’s data privacy and security programs, or to the Secretary of the federal Department of Health and Human Services.....”</p>	Please see answer to Question #82 above.
86.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section III., letter C	<p>We request the following modifications:</p> <p><u>“Business Associate may disclose Protected Health Information for Business Associate’s proper management and administration, provided that: (i) Business Associate obtains reasonable assurances from the person to whom Protected Health Information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (ii) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of Protected Health Information has been breached.</u></p>	Please see answer to Question #82 above.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		Business Associate may <u>also</u> disclose Protected Health Information as Required By Law.”	
87.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section III.	<p>We request the following be added to Section III (Permitted Uses and Disclosures by Business Associate):</p> <p>“D. Business Associate may use Protected Health Information to provide Data Aggregation Services to Covered Program as permitted by HIPAA.</p> <p>E. Business Associate may de-identify Protected Health Information in accordance with the requirements of HIPAA; provided that all identifiers are destroyed in accordance with this AGREEMENT.</p> <p>F. Business Associate may create a Limited Data Set for the purpose of providing the functions, activities or services for, or on behalf of, Covered Program as specified in this AGREEMENT, provided that Business Associate: (i) does not use or further disclose Protected Health Information contained in the Limited Data Set except as necessary to provide the functions, activities or services for, or on behalf of, Covered Program as specified in this AGREEMENT or otherwise Required By Law; (ii) uses appropriate safeguards to prevent the use or disclosure of PHI contained in the Limited Data Set other than as provided for by this AGREEMENT; (iii) reports to Covered Entity any use or disclosure of Protected Health Information contained in the Limited Data Set of which Business Associate becomes aware that is</p>	Please see answer to Question #82 above.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<p>not provided for by this AGREEMENT; (iv) ensures that any agents or subcontractors to whom it provides access to the Limited Data Set agree to substantially the same restrictions and conditions that apply to Business Associate under this AGREEMENT; and (v) does not re-identify Protected Health Information or contact the Individuals whose information is contained within the Limited Data Set.”</p>	
88.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section IV., letter 2C	<p>Appendix H, HIPAA Confidentiality, Section IV, Letter 2C – Is DOH willing to change the language to read as follows: “In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections....maintains such Protected Health Information.”</p> <p>Notwithstanding these or any other data retention, destruction or return provisions elsewhere in this Agreement, Business Associate may, in accordance with legal, disaster recovery and records retention requirements, store copies of Covered Program’s data in an archival format (e.g. tape backups), which may not be returned or destroyed upon request of Covered</p>	Please see answer to Question #82 above.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		Program. Such archival copies are subject to the obligations as set forth in this Agreement.	
89.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section V., letter B	<p>We request the following modifications:</p> <p>“Business Associate shall indemnify and hold the STATE harmless against all <u>third party</u> claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate’s <u>breach of its</u> obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, <u>without limitation</u>; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to</p>	Please see answer to Question #82 above.
90.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section VI., letter B	<p>We request the following modification:</p> <p>“Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program <u>and Business</u></p>	Please see answer to Question #82 above.

Question #	Corresponding RFP Section	Bidder's Question	Answer
		<u>Associate</u> to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.”	
91.	Attachment E: DOH Agreement, Appendix H: HIPAA Confidentiality, Section VI., letter D	We request the following modification: “Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program <u>and Business Associate</u> to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.”	Please see answer to Question #82 above.
92.	Attachment E: DOH Agreement, Appendix M: Participation by Minority Group Members and Women With Respect to State Contracts: Requirements and Procedures, Section VII	We request this section to be deleted.	Please see answer to Question #82 above.