

**NYS Department of Health (NYSDOH)
Request for Proposals
RFP # 20032
Independent External Auditing Services
Questions and Answers
SEPTEMBER 20, 2019**

Question #1

Corresponding Section: 4.2.1.1 & 4.2.2.1

Question: May the work audit plans for Paras 4.2.1.1 and 4.2.2.1 be combined into one collective work product by the successful vendor as opposed to separate deliverables?

DOH Response: *No, DOH is requiring a separate audit work plan for both the Programmatic and Financial Statement audits.*

Question #2

Corresponding Section: 2.5 & Attachment 7 Item #2

Question: Consider the guidance outlined in Paras 2.5 on page 5 and the certification required in Attachment 7 to the RFP. Given the language in Section 2.5 states "...enter into an agreement *substantially* (italics added) in accordance with the terms of Attachment 8 should the bidder be selected for award." It appears NYSDOH is willing to negotiate select terms related to an eventual contract. However the language in Attachment 7 Item #2 requires the respondent to clarify they are willing to accept without any added conditions, qualifications or exceptions, the contract terms and conditions contained in this RFP including any exhibits and attachments." Please clarify.

DOH Response: *DOH is not considering this change to the contract terms and conditions contained in the RFP in this Question and Answer document.*

As part of Attachment 7, Bidder's Certified Statements, by submitting a bid, bidders are required to acknowledge and agree that they accept the contract terms and conditions contained in the RFP. NYSDOH has reserved 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 this is in the best interest of New York State.

Question #3

Corresponding Section: 4.2.1.2 Item C

Question: RFP Para 4.2.1.2, Item c details a statement for the review of internal controls expected to be performed in conjunction with the audit report. The financial statement audit will be performed in accordance with AICPA and GAO professional standards, which do not require the performance of internal control review procedures for the purpose of expressing an opinion on the financial statements. Would DOH accept the standard audit report on financial statements issued in accordance with these professional standards?

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DOH Response: *The standard audit report is acceptable, provided that it meets all the criteria as stated in Section 4.2.1.2. DOH expects Internal Controls and Policy and Procedures to be included in the audit work. Deficiencies noted would be reported in the Management Letter.*

Question #4

Corresponding Section: 4.2.1.3

Question: RFP Para 4.2.1.3 indicated that the audited set of financial statements shall include any quantitative and qualitative tests performed by the contractor and the nature of confidential or sensitive information that may have been omitted. Such statements appear to be inconsistent with the language used in an audit report on financial statements issued in accordance with AICPA and GAO professional standards. Would DOH accept the standard audit report on financial statements issued in accordance with these professional standards?

DOH Response: *The Standard Audit Report is acceptable, provided that Section 4.2.1.3 would be incorporated as required to be in accordance with AICPA and GAO professional standards. This may occur within the Management Discussion and Analysis or Footnote sections.*

Question #5

Corresponding Section: 4.4

Question: RFP Para 4.4 indicated that Senior Auditor/Accountants must have 5-10 year of experience and possess a New York State CPA certification and that Staff Auditor/Accountants must have 1 year of auditing experience. In consideration of the MWBE utilization goal, would DOH consider revising this qualification requirement to 2-5 years of experience for Senior Auditor/Accountants and removing the CPA certification requirement and 1 year of auditing experience requirement for Senior Auditor/Accountants and Staff Auditor/Accountants, respectively?

DOH Response: *See Amendment #1.*

Question #6

Corresponding Section: 4.4

Question: We understand the incumbent used separate delivery teams for the financial and performance audit elements of the legacy contract. Would NYSDOH consider such a delivery arrangement for this contract as well?

DOH Response: *Yes.*

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Question #7

Corresponding Section: NYS DOH Contract Section III.C

Question: Please consider adding a cure period by inserting the following at the end of III.C: “The notice shall provide Contractor with a reasonable opportunity to cure, which shall be at least ten (10) business days. If Contractor does not cure the issues giving rise to the termination notice, termination shall be effective at the end of the cure period specified in the notice.”

DOH Response: *DOH is not considering this change to the contract terms and conditions contained in the RFP in this Question and Answer document.*

As part of Attachment 7, Bidder’s Certified Statements, by submitting a bid, bidders are required to acknowledge and agree that they accept the contract terms and conditions contained in the RFP. NYSDOH has reserved 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 this is in the best interest of New York State.

Question #8

Corresponding Section: NYS DOH Contract Section III.F

Question: Please consider inserting “for the DEPARTMENT’s convenience” after “may be canceled.”

DOH Response: *DOH is not considering this change to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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Question #9

Corresponding Section: NYS DOH Contract Section III.G.1

Question: Please consider deleting as this is already covered by III.C.

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Question #10

Corresponding Section: NYS DOH Contract Section III.G.2

Question: Please consider deleting. A termination for convenience is already covered by III.F.

DOH Response: *DOH is not considering this change to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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Question #11

Corresponding Section: NYS DOH Contract Section IV

Question: Please consider making the following revisions to the insurance clauses to align with general insurance practices.

- a. Subsection A: In the first paragraph, second sentence replace "a" with "the" and "acceptable to the DEPARTMENT" with "of Certificates of Insurance".
- b. Subsection B3: 1) In the last paragraph, second sentence, replace "a copy" with "Certificates of Insurance "and after "insurance" insert "required by this Contract". 2) In item b of the bulleted list, delete "any deductible, self-insured retention".
- c. Subsection B4: At the end of the first sentence, insert "to the extent the contractor causes the loss".

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- d. Subsection B5: In the first sentence replace “prior to” with “after” and in the fourth sentence, replace “a” with “the” and “acceptable to the DEPARTMENT” with “of Certificates of Insurance”.
- e. Subsection B6: In the first sentence, delete “Certificates of Insurance must indicate the applicable deductible/self-insured retentions above \$100,000.00, which are subject to approval from the DEPARTMENT.”
- f. Subsection C3: In item b under “Coverage shall include...”, delete “subcontractors” and delete items d, h, and j. In addition, in the last paragraph, at the end, insert the following: “, to the extent the Contractor causes the loss”
- g. Subsection C4: Delete “owned, leased” and “and shall name the State of New York as additional insured”

DOH Response: *DOH is not considering these changes to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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Question #12

Corresponding Section: NYS DOH Contract Section IX.E

Question: Please consider deleting in its entirety. Replace with: “Upon full and final payment to Contractor under the Contract, the Contractor assigns and grants to the State, title in the tangible items specified as deliverables or work product in Contract (the “Deliverables”) and any copyright interest in the Deliverables; provided that if and to the extent that any Contractor property is contained in any of the Deliverables (“KPMG Property”), Contractor hereby grants the State, under Contractor’s intellectual property rights in such KPMG Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such KPMG Property solely in connection with the State’s use of the Deliverables. Contractor acknowledges that it shall obtain no ownership right in confidential information of the State. In addition, the State acknowledges and agrees that Contractor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards.”

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Question #13

Corresponding Section: NYS DOH Contract Section IX.F

Question: In the first sentence, please delete the first instance of “and” and add “vendors”.

DOH Response: *DOH is not considering this change to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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Question #14

Corresponding Section: NYS DOH Contract Section IX.G

Question: Under the third paragraph of Date/Time Warranty Statement, please add “a)” to clarify the beginning of the list in the first sentence.

DOH Response: *DOH is not considering this change to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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Question #15

Corresponding Section: NYS DOH Contract Section IX.J

Question: Please consider the following changes:

- h. Delete “shall be fully liable...subcontractors and...”
- i. Please delete “of every name and description”
- j. Replace “relating to” with “for.”
- k. Delete “and intellectual property” as that is addressed in the next paragraph.
- l. Insert “to the extent” before “caused.”

DOH Response: *DOH is not considering these changes to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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Question #16

Corresponding Section: NYS DOH Contract Section IX

Question: Please consider adding the following terms to the end of Section IX of the NYS DOH contract:

- a. **R. Management Decisions.** The Client acknowledges and agrees that the Contractor’s services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Client. KPMG will not perform management functions or make management decisions for Client. **(Performance audit only)**
- b. **S. Third Party Usage.** Client acknowledges and agrees that any advice, recommendations, information, Deliverables or other work product (“Advice”) provided by the Contractor in connection with the services under the Contract is intended for Client’s sole benefit and the Contractor does not authorize any party other than Client to benefit from or rely upon such Advice, or make any claims against the Contractor relating thereto. Any such benefit or reliance by another party shall be at such party’s sole risk. KPMG may, in its sole discretion mark such Advice to reflect the foregoing. Except for disclosures that are required by law or

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that are expressly permitted by this Contract, Client will not disclose, or permit access to such Advice to any third party without KPMG's prior written consent. **(Performance audit only)**

- c. **T. Ownership.** Upon full and final payment to Contractor under the Contract, Contractor assigns and grants to Client, title in the tangible items specified as deliverables or work product in Contract (the "Deliverables") and any copyright interest in the Deliverables; provided that if and to the extent that any Contractor property is contained in any of the Deliverables ("KPMG Property"), Contractor hereby grants Client, under Contractor's intellectual property rights in such KPMG Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such KPMG Property solely in connection with Client's use of the Deliverables. Contractor acknowledges that it shall obtain no ownership right in Confidential Information of Client. In addition, Client acknowledges and agrees that Contractor shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards. **(Performance audit only)**

- d. **U. Electronic Communications.** Contractor and Client may communicate with one another by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. Each party accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). Client agrees that the final hardcopy or electronic version of a document, including a Deliverable, or other written communication that the Contractor transmits to Client shall supersede any previous versions transmitted by the Contractor to Client. **(Performance audit only)**

- e. **V. Active Spreadsheets and Electronic Files.** Contractor may use models, electronic files and spreadsheets with embedded macros created by Contractor to assist Contractor in providing the services under the Contract. If Client requests a working copy of any such model, electronic file or spreadsheet, the Contractor may, at its discretion, make such item available to Client for its internal use only on an as-is basis and such item shall be considered a Deliverable; provided that Client is responsible for obtaining the right to use any third party products necessary to use or operate such item. Contractor retains ownership of and all rights in such models, electronic files, and/or spreadsheets with embedded macros; except for the Client data contained therein. **(Performance audit only)**

- f. **W. Use of Vendors.** Client acknowledges and agrees that in connection with the performance of services under the Contract, Contractor and its Member Firms, in their discretion or at Client's direction, may utilize the services of third parties within and outside of the United States to complete the services under the Contract. Client further acknowledges and agrees that Contractor-controlled parties, member Firms of KPMG International, and other third party service providers (collectively, "Vendors") may have access to Confidential Information from offshore locations, and that the Contractor uses Vendors within and outside of the United States to provide at Contractor's direction administrative or clerical services to

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Contractor. These Vendors may in the performance of such services have access to Client's Confidential Information. Contractor represents to Client that with respect to each Vendor, Contractor has technical, legal and/or other safeguards, measures and controls in place to protect Confidential Information of Client from unauthorized disclosure or use. Contractor shall be responsible to Client for Contractor-controlled, member Firms or Vendor's failure to comply. **(Performance audit only)**

- g. **X. State Vendors and Conflicts.** The Client is aware that Contractor may be providing assurance, tax and/or advisory services to other actual or potential contractors of the Client. Contractor will perform an internal search for any potential client conflicts relating to any of the Client's contractors identified by the Client as having a role in connection with Contractor's performance of this Contract. The Client hereby agrees that a contractor's status as the Contractor's client does not impact Contractor's engagement to perform this Contract. Contractor will advise the Client of any conflicts of interest that could prevent it from performing the Contract. However, Contractor is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in Contractor's firm. Should any new information come to Contractor's attention, Contractor will promptly inform the Client. Contractor shall perform this Contract in accordance with applicable professional standards. **(Performance audit only)**
- h. **Y. Disputes.** The parties agree that any dispute or claim arising out of or relating to the Contract or the services provided thereunder shall first be submitted to non-binding mediation as a prerequisite to litigation. Mediation may take place at a location to be designated by the parties using the Mediation Procedures of the International Institute for Conflict Prevention and Resolution, with the exception of paragraph 2 (Selecting the Mediator). If, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude Contractor from filing a timely formal claim in accordance with applicable New York law provided, however, that Contractor shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction. **(Performance audit only)**
- i. **Z. Export Control.** Contractor and Client acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective activities under the Engagement Letter. Client shall not provide Contractor, or grant Contractor access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware, that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Administration Act of 1979, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810

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Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR. **(Performance audit only)**

- j. **AA. Limitation of Liability.** The NYS DOH Contract does not include a limitation of liability (LOL). Many large firms will not participate absent a commercially reasonable LOL and/or proposers will escalate their pricing to reflect the added risk associated with no LOL. Either way, absence of a reasonable LOL will likely hinder DOH's goal to achieve a best value outcome for the procurement. Will DOH consider adding a reasonable LOL or consider respondent requests for LOL in their proposals? An example LOL is as follows: Q. Limitation of Liability. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation, statute, regulation, or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the original contract value exclusive of renewals, for the Products and services, or parts thereof forming the basis of the Department's claim, or (ii) one million dollars (\$1,000,000), whichever is greater. Notwithstanding the foregoing, Contractor remains liable, without monetary limitation, for direct damages for personal injury, death or damage to real property or tangible personal property or intellectual property attributable to the negligence or other tort of the Contractor, its officers, employees, or agents. **(Performance audit only)**

DOH Response: *With respect to lettered paragraphs "a" through "i", DOH is not considering these changes to the contract terms and conditions contained in the RFP in this Question and Answer document.*

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With respect to lettered paragraph "j", "Limitation of Liability", see Amendment #1.

Question #17

Corresponding Section: N/A

Question: Would NYSDOH consider the terms and conditions successfully negotiated for these services in July 2015 as the baseline for this contract?

DOH Response: *No. DOH will award a contract for Independent External Audit Services pursuant to the process outlined in RFP # 20032.*

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Question #18

Corresponding Section: N/A

Question: Would NYSDOH consider the terms and conditions successfully negotiated for other related services to NYS DOH as the baseline for this contract?

DOH Response: *No. DOH will award a contract for Independent External Audit Services pursuant to the process outlined in RFP # 20032.*