

**NEW YORK STATE DEPARTMENT OF HEALTH
Center for Community Health
Division of Family Health
Bureau of Early Intervention**

**A Request for Proposal for
Early Intervention Fiscal Audits**

RFP #: 20054

Questions and Responses July 20, 2021

Programmatic

1. **Question:** Has DOH previously contracted outside auditors to perform audits similar to those enumerated in the RFP?

Response: Yes

- a. If so, how many hours were incurred on those audits based on revenue category?

Response: a. The number of hours per deliverable should be determined by the bidder, consistent with the requirements of the RFP, based on prior experience in the area of service claim auditing.

2. **Question:** If DOH has not previously contracted outside auditors and performed such audits using DOH inhouse auditors, how many hours were incurred on those audits based on revenue category?

Response: DOH has contracted outside auditors to perform similar audits.

3. **Question:** Is there an incumbent contractor for this contract? If so, could you provide the name of the contractor, length of service, and total billings.

Response: No, there is not an incumbent contractor.

4. **Question:** Is this the first time these audits have been conducted? If yes, to help the bidder better understand the goals of DOH, can DOH share any insights as to what prompted the request for these audits? We find that understanding the context for the request allows all Bidders to provide a more thoughtful response.

Response: No, the Department has conducted audits in the past.

5. **Question:** Are these audits the same as conducted by the BONADIO & CO LLP in 2011 under contract C027217 for Audit of Early Intervention Service Providers (according to publicly available information on the OSC Open Book NY Website)? If yes, can a summary of those findings be shared with the Bidders to the extent they are still relevant?

Response:

These audits will have similar criteria as the audits conducted in 2011. The audit protocols have been updated since 2011. Examples of potential findings are contained in the EI Audit Protocols See the Amendment #1 for this RFP, Attachment E.

- 6. Question:** To the extent that it is still applicable, can DOH share a summary of the findings from the 2005 EI Provider audits conducted by DOH in the report issued in September 2005 entitled, "Fiscal Audit Procedures for Providers and Municipalities, Providing Early Intervention Program Services"?

Response: This is policy guidance and not a summary of findings.

- 7. Question:** Have these audits been conducted in the past by either NYS staff or by a CPA Firm?

Response: Yes, the Department has previously contracted with a CPA Firm to conduct similar audits.

- a.** If so, how many hours did each audit take?

Response: a. The number of hours per deliverable should be determined by the bidder, consistent with the requirements of the RFP, based on prior experience in the area of service claim auditing.

- b.** Can we obtain a sample report that was conducted in the past?

Response: b. The report design and selection should be determined by the contractor, based on experience in conducting service claim audits. However, for informational purposes ONLY, attachments have been included. See the Amendment #1 for this RFP.

- 8. Question:** Has an example of the deliverables (statements, schedules, and disclosures) been used or developed. If so, please provide an example.

Response: The contractor will propose a template for DOH's approval.

- 9. Question:** Would DOH be able to provide a list of the providers? This allows us to perform conflict checks in advance and to understand the geographic distribution of the providers.

Response: DOH is not able to provide a list of specific providers to be audited, at this time; however, the Bureau of Early Intervention (BEI) maintains a Central Directory of Early Intervention Services and Resources (http://www.health.ny.gov/community/infants_children/early_intervention/service_providers/). The Directory, which is updated approximately every three months, contains lists of Approved Appendix Agencies/Individuals and Approved Basic Individuals. Early Intervention Providers, who will be included within the scope of this auditing contract, will be selected from this list.

- 10. Question:** If list of providers can not be made available at this time, please provide provider distribution in NYS by county or city.

Response: The Central Directory provided in the response to # 9 can be sorted by county, city, or identified service areas.

11. Question: In regards to the requirement for the CPAs to be licensed in New York State, since 2011, New York law has allowed CPA mobility (or practice privilege) for CPAs licensed in other jurisdictions that the Board of Regents has deemed to have substantially equivalent licensing requirements as New York. This out-of-state licensed CPA may provide compilation and attest services through a public accounting firm registered in this state. If our CPAs meet these mobility/practice privilege requirements: would the State consider this minimum requirement to be met if the CPAs complete the Licensure by Endorsement process upon contract award?

Response: This is acceptable, as long as the Licensure by Endorsement process is complete upon contract award.

12. Question: RFP has referenced GAAS and GAAP Standards and it ultimately is unclear which specific standards, engagement, and report type are requested. Would a report under AICPA Consulting Standards be acceptable?

Response: Yes

13. Question: The RFP indicates that the contractor will use its own resources to perform the scope of work. Given that OMIG's audit protocols are to be followed, please confirm that the contract will not be required to use OMIG audit hardware or software to complete the audits.

Response: This contract does not require OMIG audit hardware or software to be used to complete the audits.

14. Question: Does the OMIG perform any review or audit procedures of payments that should be considered in the Contractor's audit plans?

Response: OMIG's protocols are provided as Attachment C with the RFP.

15. Question: To help ensure proper planning and scheduling of resources, does DOH have an expected number of hours needed annually for these audits and for an agency vs. individual provider audit? Upon contract start date, what is the timing expectation for audits to officially kick-off?

Response: It is up to the bidder to determine the number of hours needed to conduct the audits. The contractor has 30 days from the start of the contract to provide the first audit workplan. Once this has been approved by the department, it is anticipated that the contractor would start the audits after giving notice to the entities being audited.

16. Question: The RFP makes reference to "on-site" and "virtual" procedures. Can DOH clarify the expectations and preference for executing the work on-site vs. virtually? Does DOH anticipate that providers, agency or individual, may not maintain electronic records and therefore require on-site work? Assuming we will be on-site when we cannot reasonably complete procedures virtually, can DOH estimate the number of days the Contractor can expect to be on-site per audit?

Response: Given the lifting of the State of Emergency, DOH anticipates in-person site visits and in-person audits, in accordance with State and Federal guidelines in place at that time. The duration of a site visit will vary based upon availability of the requested information, amount of information needed to conduct the audit, number of contractor staff assigned to the audit, and availability of provider records and staff necessary to address the audit. The number of hours per deliverable should be determined by the bidder, consistent with the requirements of the RFP, based on prior experience in the area of service claim auditing.

17. Question: Is the Contactor expected to engage with Service Coordinators or Evaluators or the State Early Intervention Coordinating Council (EICC) directly under this contract?

Response: During on-site audits, auditors may interview and observe relevant staff, examine documentation, confirm data or reports generated by the billing provider or municipality as billing provider, and identify the internal controls the auditee has in place for their billing and claiming process, to determine that audited claims meet the Audit Protocols.

18. Question: Do the scope of audit procedures include whether the provider billed all TPAs and commercial before seeking reimbursement from DOH? Is DOH concerned that the commercial insurers are denying claims and Medicaid is having to pay for the services, inappropriately?

Response: No, the scope is to determine that proper documentation is maintained for a paid service in accordance with the audit protocols. However, if in the course of an audit, if any patterns of not seeking third-party insurance arise, DOH would expect such pattern to be disclosed by the auditor.

19. Question: Can DOH please share a copy of the EI provider agreement that agencies and individuals must complete so we can review the initial application inputs and requirements?

Response: See the Amendment #1 for this RFP, Attachment D.

20. Question: To the extent that this is relevant to these audits, can DOH share a copy of the Mediation Agreement when there are disputes in regards to eligible services to help ensure appropriate billing?

Response: Audits pertain to services that are included in a child's Individualized Family Service Plans (IFSP). Services on an IFSP are the eligibility standard for any audit.

21. Question: Can you provide the average number of claims typically reviewed for agency and individual providers by revenue category and, if known, the average (or estimated) time required to review one sample for each?

Response: The contractor could use an acceptable statistical sampling of claims and extrapolation process. (Also see response to question 30)

22. Question: What is the expected duration for each audit to take place?

Response: The number of hours per deliverable should be determined by the bidder, consistent with the requirements of the RFP, based on prior experience in the area of service claim auditing.

23. Question: Is there a prescribed audit program in place from the OMIG or will the vendor have the ability with DOH approval to create a tailored, risk-based audit program guide driven off requirements within the OMIG protocols?

Response: There is not a prescribed audit program in place. Audit Criteria will be based on the Office of the Medicaid Inspector General (OMIG) EI Audit Protocols as well as any additional relevant EI policy guidance and regulations.

24. Question: DOH requested separate Audit Plans and Fees for Agency Provider Audits and Individual Provider Audits. From DOH's perspective, what will be some of the differences be in

how we approach each type of audit? The timeline and procedures appear to be the same or similar per the RFP (30 days for audit procedures). Does DOH expect the Agency audits to require more audit resources as there will likely be more information to review because they are larger and may involve multiple third parties? Similarly, does DOH expect the Individual Provider audits to be more challenging given that individual providers may not have records maintained in an organized or electronic format?

Response: The main differences between Agencies and Individuals are as follows: Agencies are assigned more children, provide services in more counties, provide a greater array of services, have higher claim volume, have more rendering providers employed or under contract, have stricter Medicaid compliance requirements than individual providers. Accordingly, audits of agencies may take longer than audits of individuals.

25. Question: What timeframe will be subject to audit? For example, will the Contractor audit the 2020 reimbursements or does DOH intend on auditing older years? This may factor into the audit plans and pricing as auditing old records can sometimes present challenges for auditees who do not maintain comprehensive records.

Response: DOH anticipates that an audit would be conducted for a recent Program Year (7/1/19-6/30/20) or Calendar Year (2019). DOH may ask for an audit of an older period of time (7/1/18 - 6/30/19) or 2018 based upon any findings. Providers' billing records are required to be retained for at least 6 years or longer.

26. Question: The RFP states "a random sample of claims, to be determined based on auditee claim volume." Are the random sample sizes statistically valid samples based on specific confidence and precision levels?

Response: DOH does not have a required sampling precision and confidence level for the sampling based audit. However, for your reference, OMIG audits have a 90% Confidence interval and a 95% Confidence level.

27. Question: We understand that the sample size of claims per audit are based on auditee claim volume; however, what is the minimum/maximum number of claims to be reviewed per audit?

Response: Statistical sampling of provider claims may be used for high volume providers. (Also see response to question 30)

28. Question: The RFP states "There may be instances, based on findings, where the Contractor will be asked to examine a small number of additional claims and/or records, adding a nominal amount of fieldwork." Can you provide an estimate of how many audits require this type of additional review and an estimate of the number of additional claims and/or records typically reviewed through this process?

Response: There is no way to project the number of instances. As the RFP states, this might entail reviewing a small number of additional claims and nominal amount of fieldwork.

29. Question: The RFP states that "Audit Criteria will be based on the Office of the Medicaid Inspector General (OMIG) EI Audit Protocols (Attachment C), as well as any additional relevant EI policy guidance and regulations." Can DOH specify the "relevant EI policy guidance and regulations" and provide this information to the Bidders so we may provide a more thoughtful and complete proposal response? Can DOH also clarify whether the Contractor will be working with OMIG on these audits given the reference to its EI Audit Protocols?

Response: Findings may be referred to the OMIG, by DOH, if Medicaid payments were

made. The contractor will be using the OMIG audit protocols as a general guide for the audits. All policy guidance and regulations referred to in the Audit Protocols are available on the DOH and NYCRR websites.

30. Question: Is there any anticipated number of samples per audit and range number of claims included within each audit?

Response: DOH would expect a statistically significant sampling size based upon the total claim volume. For your information, Early Intervention billing providers statewide submit over 8 million claims for services totaling approximately \$600 million on an annual basis.

31. Question: Is the Contractor expected to engage the municipalities directly under this contract, either because municipalities are subject to audits or because of the role they play in the billing process for EI services?

Response: During on-site audits, auditors may interview and observe relevant staff, examine documentation, confirm data or reports generated by the billing provider or municipality as billing provider, and identify the internal controls the auditee has in place for their billing and claiming process.

32. Question: Are the items to be reviewed during the audit listed in section 4.1.2.b. on page 8 currently captured in a consistent format by the potential auditees? Are these items retained by the providers in hardcopy or are they available electronically?

Response: The potential Auditees may have different record keeping systems, but all record keeping must meet the parameters as stated in the Early Intervention Program Memorandum 2003-1 Early Intervention Program Records found at: https://www.health.ny.gov/community/infants_children/early_intervention/memo03-1.htm. Records must be maintained in a manner so that they are accessible for the purposes of program monitoring, fiscal auditing and /or other quality assurance activities.

33. Question: Does all claim documentation that is reviewed have to be scanned in or only documentation that is related to exceptions have to be scanned?

Response: The contractor should maintain working papers (notes, scanned copies, etc.) necessary to report any findings to the DOH and to support such findings in the event the auditee disagrees.

34. Question: Could the State provide examples of what situations would be considered when determining whether virtual audits would be permitted?

Response: The Department's EI guidance relates to EI service provision to children and families and not business operations by EI providers. Given the lifting of the State of Emergency, DOH anticipates in-person site visits and in-person audits, in accordance with State and Federal guidelines in place at that time.

a. Does the State consider the current COVID climate enough of a factor to warrant virtual audits?

Response: a. The Department's EI guidance relates to EI service provision to children and families and not business operations by EI providers. Given the lifting of the State of Emergency, DOH anticipates in-person site visits and in-person audits, in accordance with State and Federal guidelines in place at that time.

35. Question: Can you clarify the timing of each audit entrance and exit conference?

Response: The audit entrance conference may take place prior to or at the beginning of the on-site audit and the exit conference may take place upon completion of the on-site audit or after, as long as it is completed within the 30 calendar day time period allotted for the audit.

a. Is the entrance conference conducted prior to fieldwork beginning or on the first day of fieldwork?

Response: a. See the response for question #35 in this section

b. Is the exit conference conducted on the last day of fieldwork or a couple weeks after fieldwork has wrapped up?

Response: b. See the response for question #35 in this section

c. Can each audit entrance and exit conference be conducted via teleconference/Zoom?

Response: c. Given the lifting of the State of Emergency, DOH expects in-person conferences to be held, in accordance with State and Federal guidelines in place at that time.

36. Question: The RFP says the contractor is responsible for obtaining “access to claims” from the provider or municipality. Will NY DOH provide the contractor with the claims data for each assigned provider?

Response: DOH can provide the contractor with claims data for providers to be audited.

37. Question: Please clarify whether the Audit Manager and senior auditor/accountant are required to have a CPA certification or whether this is a preference? Alternatively, would the Department accept a manager level resource with the requisite experience and skills to fulfil this role as otherwise described in the RFP?

Response: The CPA is a minimum qualification for these positions; therefore, the Department will not accept a manager level resource with the requisite experience and skills to fulfil this role as otherwise described in the RFP.

38. Question: “These key positions cannot be subcontracted out, nor may they be employed on a consultant basis.” Does this refer to only 4 individuals that cover the key positions listed, or are all staff required to be employed? Is subcontracting allowed to fulfill any of the staffing needs?

Response: This is required of the key positions. Subcontracting is allowed to fulfill other staffing needs.

39. Question: The RFP refers to an “approved template”. Does NY DOH already have an approved reporting template that the contractor must follow? If so, can that be shared as part of the procurement process?

Response: DOH does not have an approved template. The vendor will provide or create a template for DOH approval.

40. Question: Will the Department provide sample reports from previous audits?

Response: The report design and selection should be determined by the contractor, based on experience in conducting service claim audits. However, for informational purposes ONLY, Attachments have been included. See the Amendment #1 for this RFP.

41. Question: Historically, how many appeal hearings typically result from an annual contract award of 100 audits?

Response: The Department does not have corresponding historical data on appeal hearings.

42. Question: We note the provisions to address security, technology and confidentiality listed at <http://its.ny.gov/tables/technologypolicyindex.htm> are broad in nature and many do not seem to be applicable to this scope of work. Will the Department discuss the listed policies with the vendor upon award to mutually agree on those policies that are applicable to performance of the scope of work?

Response: Yes, as stated in the RFP in section 4.4 Information Technology: The Contractor is required, if applicable, to execute a number of security and privacy agreements with the Department including a Business Associate Agreement (Appendix H) and a Data Use Agreement (DUA) at contract signing.

43. Question: Is DOH willing to discuss the specifics of the notification clause that would reasonably (i.e., 24 hours) allow KPMG to meet our internal requirements and recognizes and confirms a reasonably suspected breach has taken place?

Response: As soon as possible, but no later than 24 hours. See Amendment #1 for this RFP.

44. Question: The audit procedures on page 29 reference "observing relevant staff." Can DOH please clarify what is meant by "observing relevant staff" to help ensure Bidders are clear on DOH's expectations for this procedures? Can DOH provide an example?

Response: Observing relevant staff may be necessary to determine whether the provider is adhering to a required internal control. An example might be separation of fiscal duties.

Administrative/Fiscal

45. Question: Can the State clarify whether the proposals are to be "open" or "password protected"?

Response: As stated in Section 7.0 Proposal Submission, all three distinct PDF proposals are to be password protected.

46. Question: To reduce the total number of pages and file size, may Bidders embed completed forms within the Administrative Proposal document that is to be submitted electronically? The files could be embedded in an easy-to-follow table for the Proposal Evaluators to confirm that each requested form has been submitted per the requirement.

Response: No. See Section 7.0 Proposal Submission of the RFP.

47. Question: Is the "price per audit" the price per individual audit, or the total for 75 audits in totality for the Agency audits and 25 individual provider audits, respectively? Is DOH receptive in bidders alternatively presenting price per audits for each of the 5 years rather than Years 1 - 3 and Years 4-5 separately?

Response: The price per audit is the price per individual audit. DOH is only accepting 2 bid rates (Years 1-3, and Years 4-5) for both agency audits and Individual audits.

48. Question: The RFP states that "Deliverables not received by the deliverable due dates may be subject to a 5% penalty and a 10% penalty for each 30 days past the deliverable due dates." If due dates are missed due to non-responsiveness on behalf of the auditee and/or the DOH Supervisor and this is communicated by the Contractor to DOH, will extensions be granted by DOH without penalty to the Contractor?

Response: No penalties will be incurred due to non-responsiveness on behalf of the auditee or the DOH Supervisor, as long as this is communicated by the Contractor to DOH.

49. Question: Please confirm if there is a mandatory requirement to perform these audits on site and, if so, how would travel and lodging costs be addressed in our proposal. Should those costs be embedded in the all-inclusive price per audit?

Response: Given the lifting of the State of Emergency, DOH anticipates in-person site visits and in-person audits, in accordance with State and Federal guidelines in place at that time. Travel and lodging should be included in the all-inclusive price per audit.

50. Question: Can the State share the budget for the proposed work?

Response: The budgeted dollar amount cannot be shared as part of the RFP Process.

51. Question: What is the total dollar value budgeted for these services each contract year?

Response: The budgeted dollar amount cannot be shared as part of the RFP Process.

52. Question: Will the Department consider adding a specified cure period in the event of termination for default as has been accepted in previous contracts with the Department?

Response: As part of Attachment 7, Bidder's Certified Statements, 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 nonmaterial 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.

53. Question: Upon review of the Request for Proposal (RFP) No. # 20054, titled Early Intervention Fiscal Audits, issued by the New York State Department of Health (DOH) on June 8 2021, we noted that it does not include a limitation of liability (LOL) provision.

We request your consideration of a Limitation of Liability (LOL) provision. Large firms or partnerships are particularly disadvantaged by not having an LOL provision and therefore there are unintended consequences of limiting competition based on size or corporate structure. LOL provisions are common in the industry, and the effectiveness and enforceability of such a provision has been noted many times in New York legal decisions. The basic principle of an LOL is to cap a contractor's liability commensurate with the fees to be paid. The clause allows the parties to equitably assess the risks relevant to the particular project, and its inclusion is beneficial to the State as well as to businesses, both large and small. First, an LOL allows a business to evaluate risk and potentially take on more risk than normal because there is some contractual relief available. Second, when an appropriate LOL is negotiated, the State maintains a level of comfort with respect to potential liability that may exist relative to the project. Third, inclusion of an LOL helps promote competition as the pool of offerors will likely increase when potential liability is capped proportional to the project. Thus, the use of an LOL helps protect the State's interests in obtaining a "best value" while encouraging greater participation by small and large businesses to share in the project's associated risks.

Based on the foregoing, we respectfully request your consideration of a Limitation of Liability

provision.

Response: No, this is not allowed.

54. Question: Is it possible for DOH and contractor to leverage contractual insurance requirements previously negotiated and currently included within an existing contract between DOH and contractor?

Response: See Attachment 8, DOH Agreement (Standard Contract), section IV.

55. Question: Would the Department consider expanding the Force Majeure to include epidemics and pandemics?

Response: The Department could consider expanding the contractual Force Majeure language; however, Bidders should be aware that (a) the Department has considered the effect of the COVID-19 virus and the public health response to the virus to constitute a force majeure occurrence in appropriate circumstances under the existing contractual Force Majeure terms; and (b) the COVID-19 virus, as currently understood and the public health response to the virus, are no longer unforeseen and should be considered in any Bid provided pursuant to this RFP.