

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

Question #	Reference Section	Bidder's Question	Department of Health Answer
1	Current Functionality of the Registry as described in Exhibit 1	What are the expectations for using the current database and website technologies?	The Department requires functionality of the registry as outlined in the RFP to include same functionality of Exhibit 1.
2	Current Functionality of the Registry as described in Exhibit 1	If there are any considerations for the new contractor to reuse any of the existing technologies, then can these be listed in a more detailed format?	The current contractor subcontracts with Inetz Media Group to provide IT support to the registry. Refer to the General Technical Requirements outlined in section 10.8.
3	Current Functionality of the Registry as described in Exhibit 1	If not, is it the expectation of the Department that none of the existing technologies or infrastructure will be reused by the new Contractor?	See response to question 2.
4	Administrative	Please share the current Board structure, bylaws, and any associated obligations for New York State.	This is not relevant to responsiveness of this RFP.
5	Administrative	Please provide a list of current subcontractors to NYS's donor registry.	Inetz Media Group- IT support Digital Express- Mail house support

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

6	Administrative	Please provide a list of existing NYS-authorized vendors that satisfy technical, security, database, and legislative components described in the scope of work?	Vendors can be found by searching the NYS Contract system, NEW YORK STATE CONTRACT SYSTEM (newnycontracts.com)
7	Administrative	Please share copies of previous bids for this contract within the last 6 years.	The Department received only one bid to the initial procurement which may be requested under the Freedom of Information Law (FOIL). To submit a FOIL request, please write to the Department's Records Access Office at FOIL@health.ny.gov . Additional information regarding the FOIL process is available online at http://www.health.ny.gov/regulations/foil/
8	Administrative	What are the transition obligations of the current contractor?	The current transition language in section 4.6 remains the same for the current contractor.
9	Administrative	By which date is a successive Contractor selected and by which date would the handover commence?	The Department anticipates a 05/01/2025 start date.
10	Administrative	What new regulatory obligations will be required by the successive Contractor that are not effective today?	See Amendment 1 of this RFP.
11	Administrative	May we see the performance matrix including number of registrants, registration rates, location, method of	The Number of registrants can be found here: New York State Donate Life Registry (ny.gov)

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		registrations, demographics, state comparisons and any other performance measurements?	<p>Statewide and county registration rates are posted monthly to the HDNY site found here State of New York Open Data Health State of New York (ny.gov)</p> <p>See Attachment C, Registration source report, found on the DOH website page for this RFP: Request for Proposals: New York State Donate Life Registry (ny.gov)</p>
12	Administrative	What volunteer services comprise those performed by the current Contractor? What services? What regions? How many volunteers? Volunteer committees?	There are no "volunteer services" required by this RFP.
13	Financial / Legal	Please list the assets that the current Contractor, New York State or any other involved party owns (ex. brand ownership, intellectual property, software licenses, brand licenses, vendor relationships, hardware, infrastructure, staffing, etc.).	<p>A high efficiency scanner will return to possession of the state.</p> <p>Vendor relationships exist between the current contractor and Inetz Media Group and Digital Express.</p> <p>There is a Memorandums Of Understanding (MOU) between the current Registry contractor and NYS Division of Motor Vehicles (DMV) which allows the sharing of data between NYSDMV and the Registry and allows utilization of DMV's customer identification verification system (CIDV). MOU's allowing sharing of data also exist between the</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

			<p>current contractor and the NYS of Health and the IDNYC program.</p> <p>The Registry IT vendor, has several Registry related relationships to support the functions of the Registry. These include but may not be limited to one with IDology and one with an email service provider. Coding and methods of management of Registry records are Intellectual property.</p> <p>There are no licenses that DOH is aware of.</p>
14	Financial / Legal	Please share all costs of the owned or leased assets including but not limited to those in the response to the above question.	The Department does not have any knowledge of leased costs. The Contractor incurs ongoing costs for services provided by Inetz and Digital Express.
15	Financial / Legal	Which of the owned assets noted above will be assigned to the successive Contractor?	A high efficiency scanner will be offered to the successive Contractor.
16	Financial / Legal	Is there a current contract between NYS and the Contractor?	Yes
17	Financial / Legal	If yes to the question above, please share a copy of this contract.	<p>The requested information may be requested under the Freedom of Information Law (FOIL). To submit a FOIL request, please write to the Department's Records Access Office at FOIL@health.ny.gov. Additional information regarding the FOIL process is available online at</p> <p>http://www.health.ny.gov/regulations/foil/</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

18	Financial / Legal	Are there any contractual obligations or relationships that are expected to transfer to the successive Contractor?	Transition requirements included in section 4.6 of the RFP.
19	Financial / Legal	For the last contract period of 6 years, please share all funding sources, revenue, etc. (ex. New York State, corporate membership, OPO's, philanthropic donations, grants, endowments, etc.).	The requested information may be requested under the Freedom of Information Law (FOIL). To submit a FOIL request, please write to the Department's Records Access Office at FOIL@health.ny.gov . Additional information regarding the FOIL process is available online at http://www.health.ny.gov/regulations/foil/
20	Technological	Are there desired controls that do not exist today related to cyber security?	Multifactor identification for administrative users of the Registry as identified in Section 4.1.2.2 is a requirement that has not yet been implemented.
21	Technological	Are process changes desired relative to how the platform is managed?	Section 4.0 outlines the requirements of the platform.
22	Technological	Will bidders be granted access to the current documentation for the platform?	The awarded bidder will be granted access to all non-proprietary documentation.
23	Technological	Can you share any potential enhancements that are desired at this point?	Refer to section 4.1.3 of this RFP.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

24	Technological	Are there any known issues or broken functions that exist with the platform today?	No
25	Technological	Are there rate sheets available for Excelsior resources?	The Department is not clear what is meant by Excelsior resources and is therefore unable to provide this.
26	Technological	Is the Registry website protected via Cloud Flare?	The current technology stack is not materially relevant to the bidder's response. Bidders should propose a solution that meets all technical requirements defined in the RFP.
27	Technological	What type of WAF is used today to protect the Registry website?	See answer to question 26.
28	Technological	Does the existing platform have geographic redundancy?	All donor registry data are encrypted semi-weekly and stored offsite in a secure data vault. A secondary backup and failover network is maintained in NYS.
29	Technological Section 4.1 4.1.2.1, Paragraph 1	What is the name of the company and platform that hosts the site today?	Inetz Media Group
30	Technological Section 4.1 4.1.2.1, Paragraph 5	What, if any, standards are required for compliance: NIST 800-53, NIST 800-171r2, or HIPAA?	As stated in section 4.5 (Security) of the RFP, the "selected Contractor shall comply with all privacy and security policies and procedures of the Department (https://its.ny.gov/system/files/documents/2022/10/nys-

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

			p03-002_information_security_policy.pdf) and applicable State and Federal law and administrative guidance” throughout the life of the contract. The selected contractor will be responsible for evaluating these policies to determine security and privacy needs for the solution and must “maintain and provide to the Department upon request their data confidentiality plans and procedures for meeting security requirements”.
31	Technological Section 4.1 4.1.2.1, Final Point	Is there an expectation of expansion of the logging facility within the platform?	As stated in section 10.4 of the RFP, “Systems, applications and networks must comply with NYS Secure Configuration, Security Logging and Encryption Standards and security plans must address these areas in detail.”
32	Technological Section 4.1 4.1.4.3, Point A	What is the required retention period for the data within the registry?	Section 4.1.4.3 requires data submitted or transferred electronically are stored permanently within the Registry. It is expected that paper documents in the possession of the Contractor that are not attached to a registrant’s Registry record, will be kept a minimum of 20 years.
33	Technological Section 4.1 4.1.4.7.D, Point 1	Do pre and postproduction environments exist today to fix patches, make upgrades, and perform tests?	Yes
34	Technological Section 4.1	Are there preferred translation technology services and what language MUST be provided for?	Website must be in English and Spanish; paper forms must be in all NYS required languages. Please refer to the OGS

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	4.1.4.8.B, Point C		Office of Language Access webpage at https://ogs.ny.gov/new-york-state-language-access-law .
35	Technological Section 4.1 4.1.4.8.C, Paragraph 1	To whom should the Contractor reach out to if push messages from the Registry@donatelife.ny.gov address is blocked by spam filters?	The question is unclear as to where email is blocked in this scenario. Per 4.1.4.8.C (Management of Registry@donatelife.ny.gov Email Account) of the RFP, “The Contractor will maintain the Registry@donatelife.ny.gov email account.”
36	Technological Section 4.4 Information Technology, Paragraph 1	Understanding that hosting will occur via the NYS Private Cloud according to ITS-P19-002, what are the current parameters of the infrastructure today (ex., compute, storage, ram)?	This understanding is incorrect, per section 4.1.2.1 (Facilitation, Management and Processing of Enrollments, Modifications and Revocations) of the RFP, “The Contractor will manage, maintain and continue the functionality of the NYS Donate Life Registry, including hosting of the servers in which the Registry database is stored. ”
37	Technological Section 4.4 4.4.10, Paragraph 1	What is the Department’s process for categorizing emergency work?	The Department defines emergency work based upon their operational need.
38	Technological Section 4.4 4.4.10, Paragraph 1	What is the average time frame for emergency work to be categorized by the Department?	The Categorized timeframe for emergency work is based upon operation need.
39	Technological Section 5.4 Point 1	Is the successive Contractor given the opportunity to positively address and resolve concerns or issues prior to the execution of the bill of rights?	See Section 5.4, Point 1. The Department would not exercise its reserved right a Bidder's proposal arbitrarily. In almost every hypothetical

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

			case we can imagine, the Department would exercise its discretion under Reserved Rights numbered 5, 10, and 16, for example, before rejecting a Proposal.
40	Technological Section 10.6 Paragraph 21, Point N	Is encryption at rest and at motion in place?	Some of this I am not sure is sharable due to the proprietary nature of the product. Per HLTDD – Yes. See answer to question 26.
41	Technological Section 10.8 Architecture Requirements, Point E	Is it a requirement that the successive Contractor sub-lease hosting resources through NYS Private Cloud?	Some of this I am not sure is sharable due to the proprietary nature of the product. See answer to question 36. The meaning of NYS Private Cloud in this question is unclear. The Department has included all requirements in the RFP.
42	Technological Section 10.8 Architecture Requirements, Point E	Will hardware and infrastructure be provided by NYS Private Cloud using their cloud solution?	Some of this I am not sure is sharable due to the proprietary nature of the product. See answer to question 41.
43	Technological Section 10.8 Architecture Requirements, Point 2	What Linux repositories are officially listed for use?	See answer to question 26.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

44	Technological Section 10.8 General Technical Requirements , Paragraph 2	What Linux distros are officially recommended for use – for ex., RHEL 8, Ubuntu 20.04/22.04 and SLES 15?	Please see section 10.8 (Exhibit 8 – Technical Requirements) of the RFP for the Department’s technical preferences.
45	Technological Section 10.8 General Technical Requirements , Paragraph 2	Are there specific versions of Linux that are recommended by the Department?	See answer to question 44.
46	Technological Section 10.8 General Technical Requirements , Paragraph 2	What version of PHP and addons are being used currently for the Registry?	See answer to question 26.
47	Technological Section 10.8 General Technical Requirements , Paragraph 2	What kernel parameters are configured for the Registry?	See answer to question 26.
48	Technological Section 10.8	Can you provide a list of packages currently used by the Registry?	See answer to question 26.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	General Technical Requirements, Paragraph 2		
49	Technological Section 10.8 (General Technical Requirements, Paragraph 2)?	What Apache plugins and versions are currently used by the Registry?	See answer to question 26.
50	Technological Section 10.8 (General Technical Requirements, Paragraph 2)	What version of MySQL is being used for the backend?	See answer to question 26.
51	Section 5.2 4.1.4.8.B Management of Phone Calls Made Directly to the Contractor	<p>Under the current Registry contract, the Contractor is obligated to respond to phone calls from the public live during normal business hours (9:00 a.m. to 5:00 p.m.), and this can be achieved "directly or via contract with a call center."</p> <p>Under this RFP, would the contractor's obligation to answer its business phone line live during business hours still be fulfilled via the contract with the call center alone?</p>	Refer to section 4.1.4.8 for Customer Service responsibilities. See also response to question 62.
52	4.1.4.1 (j) General Requirements	This section requires Contractor to meet with the State's interagency work group and Department no less frequently than monthly. Can the Department confirm or clarify that	See Amendment 1 to this RFP.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		the work group referenced here is the statutorily constituted interagency work group pursuant to New York Public Health Law § 4310, which has only met once on 4/18/2018?	
53	4.1.4.5 Documentation, 4.1.4.6 Workplan and Budget, 4.4.7 Quality Assurance Plans, Performance Improvement Plans, Test Plans and Testing. 4.1.4.7.B	We understand that Contractor is accountable for the continuous improvement of the Registry, but we are concerned by the use of the term “Performance Improvement Plan” to describe this process. Performance Improvement Plans have a generally recognized meaning within the field of Human Resources, meaning a plan that targets individual employees for targeted improvements in a short term. This contract primarily governs the operational and maintenance processes of the Registry. The terms "overall improvement" lack clarity, requiring clarification: does this process pertain solely to administrative functions of the Registry and website? Can the Department provide in detail the administrative, operational, and technical expectations for inclusion in these plans?	Exhibits 3 and 4 include requirements of the Performance Improvement Plan. Performance Improvement Plans would be limited to the operational, administrative and technical aspects of the work outline in this RFP
54	4.1.5	Can the Department clarify the distinction between “Supporters” and “Partners”? Contractors that are private non-profit entities may define “supporters” to be inclusive	For this RFP the Department uses supporters and partners as one in the same.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		of charitable donors and entities who may support other activities, and this could inadvertently be interpreted to apply to a broader range of organizational relationships and/or functions.	
55	4.2 et seq. Staffing	The RFP requires that “staff” perform certain specified roles, and that in the case of Technical Staff, the responsibilities may be performed by a subcontractor under supervision. We seek a clarification with regard both to the definition of “staff” used elsewhere in this section, i.e. whether staff members must all be W-2 employees, or if they may include independent contractors, and also whether roles such as Data Entry and Customer Service may be staffed by contracted, rather than employed, personnel, assuming that they are otherwise qualified, supervised and bound to the terms of the Contract, as per Section 4.8?	Not all staff need to be employees of the Contractor. See Amendment 1 to this RFP.
56	4.3 Reporting	We seek clarification concerning various aspects of the reporting of “lobbying”. Can the Department further clarify the following: <ul style="list-style-type: none"> • How they expect Contractors to determine “initiatives being pursued by the Contractor that <i>could potentially</i> affect the Registry, its operation or the deliverables of this contract?”, given that 	<ul style="list-style-type: none"> • The reporting section relates to reporting on progress on items included in Section 4.1.4.6 Workplan and Budget which includes plans and recommendations for legislative and/or regulatory changes that would affect the Registry. • Efforts in this context include actions taken to pursue and attain the legislative and/or regulatory

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>virtually any legislative initiative could impact registration</p> <ul style="list-style-type: none"> • Define “efforts • Define “legislative status”, which is not within the realm of knowledge of a private entity (which is not privy to internal legislative machinations) 	<p>changes that were identified in the bidders workplan.</p> <ul style="list-style-type: none"> • “Legislative status” is not a phrase used in this RFP.
57	Section 4.1.2.1 Facilitation, Management and Processing of Enrollments, Modifications and Revocations	<p>The RFP states that the Contractor must:</p> <p>“Provide a system that notifies the Contractor, the Department, the registration source, and others when appropriate, within no more than forty-eight (48) hours of the occurrence of an error and/or failure to receive, retrieve or process registration data from an established electronic source. Work must begin immediately to determine the cause(s) of such error and resolve it within forty-eight (48) hours of awareness of the error or the failure.”</p> <p>This language seemingly holds the Contractor solely responsible for discovering, notifying, and resolving any errors within 48 hours, despite the origin of the error. Importing registration data into the Registry involves working with third-party entities over which the Contractor has no control. Performance issues may arise via these</p>	See Amendment 1 of this RFP.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>entities which Contractor could not control nor resolve within 48 hours despite best efforts.</p> <p>Can the Department clarify and, if necessary, modify the language to indicate that the identification and resolution of an error within 48 hours applies to errors or occurrences within the full control of the Contractor?</p>	
58	Attachment B – Cost Proposal	<p>The RFP stipulates the submission of a five-year projected Registry expense proposal. However, we have noted a significant departure in the format of the current cost proposal from that of the original RFP released in 2014 and the State’s expenditure-based budget template.</p> <p>While administrative and operational expenses in the 2014 RFP bid form required projections for similar expense categories present in the current RFP's cost proposal document (inclusive of overhead, labor, equipment, materials, and travel), the earlier RFP aggregated these expenses as a single line item. In contrast, the current RFP's cost proposal divides this functional area into six distinct deliverables, each involving significant overlap in terms of overhead, labor, equipment, materials, and travel.</p> <p>Will the budget submitted to DOH for approval each year (and related expenditure reports/vouchers) be required to</p>	<p>No. See section 4.7 Payment “Items included in the fixed cost payments and those included in the expenditure-based payments will be established in the Contract and may be changed periodically by written agreement between the Contractor and the Department.”</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		be in the same format as the cost proposal included in the current RFP, or will annual budgets (and associated expense reports/vouchers) align with State’s expenditure-based budget format? Alternatively, would the state consider combining these deliverables into a single-line item?	
59	Attachment B – Cost Proposal	<p>We acknowledge the State's requirement to project annual expenses for the entire 5 year contract term. However, operational and administrative costs for the Registry may fluctuate considerably due to various factors which are currently unknown to both the Contractor and the Department.</p> <p>In the event that anticipated expenses for a future fiscal year surpass those outlined in the Cost Proposal, clarification is sought on whether additional funding will be provided to the Contractor or if the Contractor will be obligated to adhere to the projections initially presented in the cost proposal?</p>	Bidders will be obliged to adhere to the projections submitted in their cost proposals.
60	Attachment B – Cost Proposal	The cost proposal template includes “data entry” among the projected expenses to be included in the “Registry Requirements and Functionality as well as Website Requirements and Functionality” deliverables. Meanwhile, the "Administration and Operational Support" functional	<p>See updated Attachment B, Cost Proposal, found on the DOH website page for this RFP: Request for Proposals: New York State Donate Life Registry (ny.gov)</p> <p>See Amendment 1 of this RFP:</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>area incorporates "Data Entry, Receipt, Retrieval, and Record Storage of Paper Records" among its deliverables.</p> <p>Could the Department provide clarification on the distinctions in the concept of "data entry" between these deliverables?</p>	<p>Data entry has been removed from the following:</p> <ul style="list-style-type: none"> • Registry Requirements and Functionality • Website Requirements and Functionality <p>"Import" has been added to both sections of the cost proposal.</p>
61	<p>Proposed Qualifications, Exceptions Qualification/Exception 1 Sections 4.1-Tasks and Deliverables, 4.1.3 (Website requirements), 4.1.4 (Administration and Operational Support), 4.1.5 (Promotion of Registry Enrollment), 4.2.1 (Staffing, Project Manager), 4.3 (Reporting), 4.4.8 (Open issues log), 6.13 (state finance law</p>	<p>In reviewing the documentation requirements (reports and plans) outlined in the RFP, we have identified considerations related to their potential impact on operational efficiency and associated financial implications, primarily related to the frequency and redundancy of mandatory submissions specified in the RFP.</p> <p>For instance, the RFP mandates the annual submission of a "PIP" and "QAP", with additional requirements to report on them quarterly. As written, even quarterly reports currently describe "monthly" reporting within them. In effect, these additional, unnecessary plans create a multiplicative load throughout the entire existing reporting structure under the contract.</p> <p>Considering the potential impact on cost and time associated with the proposed reporting and documentation structure, we respectfully request DOH evaluate the</p>	<p>The requirements remain as outlined in the RFP.</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	re-consultant disclosures), 10.4 (PIP Exhibit)	necessity and frequency of these additional requirements. The intention is not to undermine the importance of reporting and oversight but to ensure that the operational impact is carefully considered. We kindly request the DOH consider a re-evaluation of the scheduled submissions, with a focus on limiting frequency and exploring consolidation possibilities to strike a balance between compliance and operational efficiency.	
62	Qualification/Exception 2 4.1.4.8.A Management of Office of Children and Family Services Call Center Referrals, Exhibit 10-Call Center p.10-6	Exhibit 10 to the RFP outlines the current role of OCFS in providing Customer Service and telephonic response. The quality and responsiveness of this service to the needs of all members of the New York State community is vital to the successful performance of the Registry. Is the mandatory utilization of this service a sine qua non for the duration of the contract or would the Department consider preserving the current Registry contract structure that allows the Contractor to determine who is the best suited vendor (with DOH approval) to provide the valuable service of responding to the public?	The Department intends to continue the use of the OCFS call center for callers utilizing the established 800 number but is not opposed to contractors subcontracting with another call center provider to manage Registry related calls made to their direct number. Responses to similar questions provided by non-OCFS call centers should be consistent with those provide by OCFS.
63	Qualification/Exception 3	Under the current Registry contract, the Contractor is obligated to respond to phone calls from the public live during	See response to question 62.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	<p>4.1.4.8.B Management of Phone Calls Made Directly to the Contractor</p>	<p>normal business hours (9:00 a.m. to 5:00 p.m.), and this can be achieved "directly or via contract with a call center."</p> <p>In the proposed RFP, a new requirement mandates that the Contractor itself answer its business phone lines live during business hours. This may create significant logistical challenges if a Contractor has broader business operations outside the registry.</p> <p>Can the Department waive this requirement for Contractors and modify the RFP language to reflect the processes currently in place under the existing contract, namely that this requirement have the option to be met via contract with a call center?</p>	
64	<p>Qualification/Exception 4 4.1.4.1 (j) General Requirements</p>	<p>The Interagency Work Group has met once, on 4/18/2018. Given this fact and the commitment of time required for gathering a multi-agency group, it is not clear that there is an actual ability or necessity to have a mandatory monthly meeting with the Contractor. Can the Department modify that this requirement be, at a minimum, amended from a monthly requirement to an "as-needed" requirement, or that it be entirely waived?</p>	<p>See response to question 52 and Amendment 1 to this RFP.</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

65	<p>Qualification/Exception 5</p> <p>4.1.4.1 (j) General Requirements, 4.2.1 Project Manager</p>	<p>The RFP requires the Project Manager, and other select staff and/or subcontractors, to meet with the Department no less frequently than monthly, in person or virtually. Under the current Registry contract, Contractor is already required to meet quarterly with the Department. Contractually tripling the frequency of meetings creates an unnecessary burden on the Contractor’s resources, further so when it may involve other “select staff and/or subcontractors.”</p> <p>Can the Department modify this requirement to reflect meeting practices under the current Registry contract: on a mutually agreed upon schedule, but no less frequently than every three months unless determined otherwise as necessary by the Department, and meeting with the State’s interagency work group, as necessary?</p>	See response to question 52.
66	<p>Qualification/Exception 6</p> <p>4.1.4.5 Documentation, 4.1.4.6 Workplan and Budget, 4.4.7 Quality Assurance Plans, Performance</p>	<p>“Performance Improvement Plans” have a generally recognized meaning within the field of Human Resources, meaning a plan that targets individual employees for targeted improvements in a short term. The focus described necessitates an analysis on enhancing the overall performance of the Registry. This contract primarily governs the operational and administrative processes of the Registry, with no opportunity to grow, promote, or increase</p>	See response to question 53.

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	<p>Improvement Plans, Test Plans and Testing. 4.1.4.7.B</p>	<p>enrollment of New Yorkers outside of registry partnership. The terms "overall improvement" lack clarity, requiring clarification that the process pertains solely to administrative functions of the Registry and website. The overarching directive lacks specificity and is vague, leaving the degree of comprehensiveness ambiguous. This deficiency fails to provide the contractor with adequate information to determine the cost and investment required to fulfill this deliverable.</p> <p>Given the overbroad and vague nature of the PIP and QAP, can the department waive the requirements concerning the new PIP and QAP?</p>	
67	4.2 et seq. Staffing	<p>The new availability and response time requirements expected of the Project manager under the RFP may be difficult or burdensome to operate in practice. The RFP and existing contract have short response time constraints for particularly pressing or emergency issues, such as security/data breach incidents, registry data upload issues, and similar circumstances. However, the RFP requires that the Contractor's Project Manager be accessible by phone or e-mail during NYS business hours without any exception and mandates a 24 hour response time for every email from the Department. A contractual obligation for a 24 hour</p>	<p>Section 4.1.4.1 requires the Contractor respond to non-urgent DOH questions within 5 business days unless a shorter timeline is requested based on urgency of the department's request.</p> <p>See Amendment 1 to this RFP.</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>response time to all emails, regardless of priority or purpose, is overly restrictive. There are numerous circumstances where this response time may not be achievable. Importantly, per the RFP, the Project Manager may be a singular individual.</p> <p>Can the Department waive the 24 hour email response time requirements and availability requirements and modify the language to reflect practices under the current Registry contract?</p>	
68	<p>Qualification/Exception 8</p> <p>4.3 Reporting</p>	<p>We are concerned that the requirement for a private non-profit organization to report “lobbying” to an executive branch agency may impinge on the free speech rights of the private entity, and create a tension both between the non-profit proposed Contractor and the Department, and between the separate branches of government. This conflict is caused in part by the broad definition of what is to be reported on (“initiatives being pursued by the Contractor that <i>could potentially</i> affect the Registry, its operation or the deliverables of this contract) and the requirement to report “efforts”, which are undefined here, but would be defined in other areas of law which require public reporting pursuant to more stringent definitions.</p>	<p>See response to question 56.</p> <p>The objective of the Department is to be aware of and be able to coordinate, insofar as possible, initiatives for the development and regulation of the NYS Donate Life Registry by the New York State Legislature to maximize the potential benefit of legislation affecting the Registry.</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>Virtually any legislative initiative could have an impact on registration. In addition, this clause requires reporting on activities that are not part of the Deliverables of the Contract, and which do not impact the performance of the deliverables. Finally, the reporting requirement for “lobbying efforts” require the Contractor to report on “legislative status”, which is not within the realm of knowledge of a private entity, which is not privy to internal legislative machinations.</p> <p>Can the Department waive this reporting requirement, as it is unrelated to the performance of deliverables, and is potentially Constitutionally problematic? In addition, the same knowledge of activities defined as lobbying are available publicly on an equal footing to all requestors, without the need for legally risky contract provisions. Removing this contract term would not prohibit voluntary disclosure by the Contractor of issues of shared interest, however.</p>	
69	<p>Conflicts, Omissions, Errors, Discrepancies Conflict/Discrepancy 1 –</p>	<p>“Full payment of vouchers may be impacted and/or delayed by the Department based on assessments by the Department of the Contractor’s progress toward satisfactory accomplishment of Contract deliverables and established timelines.”</p>	<p>It is a customary and necessary function of the Department to require performance by contractors of the terms of their contracts with the Department and is mandated by the Division of the Budget and the Office of</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

<p>Section 4.7</p>	<p>However, this section creates significant conflict and discrepancy with Section III Termination, under Attachment 8, Standard Clauses of New York State Contract, which extensively details the process by which any payment to the Contractor may be withheld or stopped in the event the Department determines the Contractor is unable or unwilling to perform the contract to the Department’s satisfaction. Section III describes with specificity: contractual requirements concerning timing, written notice requirements of the Department, a cure period for the Contractor, termination processes, and equitable payment for all work performed prior to the effective date of termination at the discretion of the State Comptroller. This is in stark contrast to the vague and discretionary language of RFP Section 4.7, which has no specifics as to notice, timing, cure, or recourse, and gives the Department – not the Comptroller - the discretion to withhold or “impact” payment without cessation of work or termination of the contract, without regard to any equitable payment for all work performed prior.</p> <p>In the event of such an unfortunate situation, these processes would conflict and cause discrepancies. Pursuant to Attachment 8, Appendix A, Section 13, in the event of a conflict between the terms of the contract and the terms of</p>	<p>the State Comptroller. The relevant portions of Attachment 8 to the RFP would be to the New York State Department of Health Contract, Section I. (General Terms and Conditions), Paragraphs M. and N., and Section II. (Payment and Reporting), and, in particular, the last subparagraph of Paragraph II.B., which will be based on the final terms of Appendices B and C to the final Contract entered into with the successful bidder.</p>
---------------------------	---	--

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>Appendix A, the terms of the Appendix shall control. Accordingly, please clarify the Department’s understanding of this process and remove the conflicting language in the RFP.</p>	
70	<p>Conflict/Discrepancy 2</p> <p>Section 4.1.2.1</p>	<p>The RFP states that:</p> <p>“In compliance with the NYS Public Health Law and regulations adopted thereunder, provide written or electronic notification of registration consistent with NYS Public Health Law Section 4310 to all individuals enrolling in the Donate Life NYSR. Written in-person and electronic notifications shall be utilized whenever possible to accomplish this requirement. Postal mail notifications may be used when in-person and email notification are not possible. Notice of registration to new registrants must be sent within one (1) week of receipt and processing of registration.”</p> <p>However, in the same section, the RFP also states:</p> <p>“Place registrations received through NYSDMV, IDNYC, NYSoH, NYSBOE, NYSDEC and any other sources determined by the Department, by means other than electronic signature, in a twenty-eight (28) day pending status to give the registrant time to receive their notice and address claims of erroneous registrations. If the registrant does not</p>	<p>The Department does not agree that there is a conflict among the provisions of the Public Health Law, the State Technology Law, and the practice determined by the Department and the Commissioner of Health to best ensure that all registrations and registrants in the Registry are fairly and respectfully treated and each registration is intentional and completely voluntary.</p>

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>request removal from the Registry or modification of their donation during this period, the registration becomes active after the twenty-eight (28) day period has passed.”</p> <p>This 28 day pending status is not found in law and directly contradicts NYS Public Health Law Section, which the RFP previously states it complies with. Section 4310 lists numerous forms and other means that do not involve an electronic signature by which an individual can enroll in the Registry, effective immediately, with written, in-person or electronic, notification. The statute states:</p> <p>Enrollment or amendment or revocation through the donate life Registry website through any of the means listed in this subdivision may be signed by electronic signature, in accordance with the provisions of article three of the state technology law, supported by the use of suitable mechanisms including unique identifiers to provide confidence in the identity of the person providing the electronic signature. The registration shall take effect upon the provision of written or electronic notice of the registration to the individual enrolling in the donate life Registry and the Registry's entry of the individual's enrollment data in the Registry; provided, however, that written in-person or electronic notifications shall be utilized</p>	
--	--	---	--

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>wherever possible as methods for fulfillment of the purposes of this paragraph (emphasis added).</p> <p>Accordingly, pursuant to the statute, registration by any means – which may not necessarily be via electronic signature – shall take effect upon the provision of written or electronic notice. Specifically, written in-person or electronic notifications shall be utilized whenever possible. Therefore registration that does not involve an electronic signature, when paired with a written in-person or electronic notice (such as a form or receipt received in-person) is effective upon provision. The 28 day pending status ignores these statutory requirements, creating a discrepancy and artificially creating a barrier to entry to the Registry. Furthermore, Contractor is also aware that statutes update over time, and therefore recommends for maximum clarity and flexibility that the RFP simply cite to the requirements of Section 4310 rather than including conflicting, outdated, and arbitrary language directly into the contract.</p>	
71	Conflict/Discrepancy 3	Attachment 8, Appendix A: Section I. G. clearly states that Contractor is considered,	The terms of the New York State Department of Health Contract, Section I. (General Terms and Conditions),

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	<p>Attachment 8, Appendix A: Section I. G.</p>	<p>“an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the DEPARTMENT.”</p> <p>This status is clear in the existing Registry contract, and Contractor’s continued goal is to maintain that distinction as an independent contractor. However, Contractor has concerns that the proposed RFP calls for such a burdensome and new degree of control, management, and reporting by the Department that it may run afoul of the employer independent contractor analysis under NY law and the assertion in Attachment 8, Appendix A: I. G. Under the Labor Law, “employment” is broadly defined as “any service under any contract of employment for hire, express or implied, written, or oral”. <i>Labor Law § 511[1][a]</i>. Traditionally, a number of factors are considered in determining whether a worker is an employee or an independent contractor, examining “[a]ll aspects of the arrangement”. <i>Matter of Vega, 149 N.E.3d 401, 404–05 (N.Y. 2020)</i>. The touchstone of the analysis is whether the employer exercised control over the results produced by the worker or the means used to achieve the results (citations omitted). <i>Id.</i> The doctrine is necessarily flexible</p>	<p>Paragraph G, are clear and unambiguous, as is the order of precedence of the components of the Contract that will be entered into with the successful bidder.</p> <p>It is imperative that the successful bidder and the Department work in close coordination and consistently communicate with each other and with the other partners and New York State agencies that use and provide input into the NY Donate Life Registry. The Registry must reflect and implement fully the laws and policies of the State.</p> <p>A potential Bidder that is uncomfortable with a close and integral working relationship with the staff of the Department and other agencies of the State may wish not to consider submitting a Bid Proposal.</p>
--	--	--	---

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>because no enumerated list of factors can apply to every situation faced by a worker, and the relevant indicia of control will necessarily vary depending on the nature of the work. <i>Id.</i> The NY DOL website is instructive as to numerous examples of factors that may create an employer relationship, such as if the employer:</p> <ul style="list-style-type: none"> • Choose when, where, and how they perform services • Provide facilities, equipment, tools, and supplies • Directly supervise the services • Set the hours of work • Set the rate of pay • Require attendance at meetings and/or training sessions • Ask for oral or written reports • Reserve the right to review and approve the work product • Evaluate job performance • Have the right to hire and fire <p>See https://dol.ny.gov/independent-contractors.</p>	
--	--	--	--

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

Contractor will strive to work collaboratively with the Department at every step, and acknowledges the ultimate reserved rights of the Department to determine its satisfaction or final approval of services provided, as needed. However, under the proposed RFP, development, reporting, and advance approval directly by the Department have become intertwined and prerequisite at every possible step throughout the Contractor’s operations, to the extent that the Department has extensive, new control over the Contractor. While the existing Registry contract has review and reporting requirements, including many required by law, the proposed RFP has numerous new requirements that are not required by law. Aspects of control necessitated by regulatory requirements alone cannot establish an employment relationship, but other aspects of control not so required may demonstrate sufficient control to inadvertently establish an employee relationship. *Matter of Phillips, 190 N.Y.S.3d 488, 490–91 (N.Y. App. Div. 3d Dept. 2023)*¹.

¹ “Although certain aspects of the control exercised by All Systems were necessitated by regulatory requirements and thus, standing alone, could not establish an employment relationship (see *Matter of Bogart [LaValle Transp., Inc.]*.”

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

		<p>These aspects of control not required by law, present in the proposed RFP, include:</p> <ul style="list-style-type: none"> • New plans such as the PIP and QAP and comprehensive reporting on each; • Review and approval of an annual “work plan” that covers all aspects of operations; • Review and approval of all content, graphics forms and translations; • Discussion, review, and approval of any change to the website; • Review and approval of training materials; • Review and approval of all required documentation; • Required clarifications of, revisions to, and approval or rejection of “all: <ul style="list-style-type: none"> ➢ proposed plans, ➢ budgets, ➢ documents, etc associated with the contract”; • Review and approval of timelines; • Selection of the DHDTTC as the contractor/operator of the call center upon which Contractor must rely; • Control of Contractor hours and response times, including mandatory availability by phone and email, not only as a function of Registry-related customer service requirements, but also to DOH’s program staff regardless of topic or priority; • Review of acceptance criteria and new features; 	
--	--	---	--

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

- Approval of Contractor contacts with OCFS;
- Removal of any contractor staff on 2 weeks notice at total discretion of the Department; and
- Approval of scripts by customer service staff.

The Department even asserts control that may be in conflict with the law or other aspects of the contract, such as inserting extra judicial barriers to enrollment via 28 day waiting periods and asserting the discretionary ability to withhold payment. When viewed in sum total, the degree of mandatory reporting and control required by the Department could seem to give the appearance to Contractor's staff, subcontractors, or other third parties that Contractor's staff are employees of the Department. Pursuant to Attachment 8, Appendix A, Section 13, in the event of a conflict between the terms of the contract and the terms of Appendix A, the terms of the Appendix shall control. For the sake of all parties, Contractor urges the Department to consider the previously mentioned questions, conflicts, and proposed exceptions in order to best clarify and solidify the independent contractor relationship. The least disruptive, simplest solution would be to modify the RFP to reflect the reporting and approval processes currently in place. These processes are clear,

Request for Proposals #20245 Questions and Answers

Issued: February 21, 2024

	<p>tested, effective, and compliant with the law. Alternative solutions may involve some combination of reserving rights rather than mandatory advance approval of every process and a streamlined and less burdensome reporting system.</p> <p><i>Commissioner of Labor</i>, 140 A.D.3d 1217, 1218–1219, 34 N.Y.S.3d 195 [3d Dept. 2016]), other aspects of control were not so required, and, in view of the foregoing, we find the Board's determination that All Systems exercised sufficient control over claimant to establish an employment relationship to be supported by substantial evidence, notwithstanding evidence in the record that could support a contrary conclusion (see <i>Matter of Rivera [State Line Delivery Serv.-Roberts]</i>, 69 N.Y.2d 679, 682, 512 N.Y.S.2d 14, 504 N.E.2d 381 [1986], cert denied 481 U.S. 1049, 107 S.Ct. 2181, 95 L.Ed.2d 837 [1987]; <i>Matter of Paka [Same Day Delivery Inc.-Commissioner of Labor]</i>, 213 A.D.3d 1050, 1053, 183 N.Y.S.3d 604 [3d Dept. 2023]; <i>Matter of Sow [NY Minute Messenger Inc.-Commissioner of Labor]</i>, 201 A.D.3d at 1065, 161 N.Y.S.3d 445)." <i>Matter of Phillips</i>, 190 N.Y.S.3d 488, 490–91 (N.Y. App. Div. 3d Dept. 2023)</p>	
--	---	--