



**WESTCHESTER MEDICAL CENTER**  
WORLD-CLASS MEDICINE THAT'S NOT A WORLD AWAY.

# **REQUEST FOR PROPOSALS**

**WMC Quality and Experience Ratings**

**PMC-6711**

**RFP Issue Date: August 17, 2020**

**Proposal Due Date: September 14, 2020**

**WESTCHESTER MEDICAL CENTER  
PURCHASING DEPARTMENT**

**WESTCHESTER MEDICAL CENTER  
Executive Offices at Taylor Pavilion  
Office of Legal Affairs  
100 Woods Road  
Valhalla, New York 10595**

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### **Attachments**

- Attachment A – Price Proposal
- Attachment B – Standard Terms and Conditions
- Attachment C - Vendor Debarment/Exclusion Questionnaire
- Attachment D - Disclosure of Prior Non-Responsibility Determinations
- Attachment E – State Finance Law Affirmation
- Attachment F – M/WBE and EEO Compliance Documentation Forms

# 1. Introduction and Background

## 1.1 Purpose of the Request for Proposals

Westchester Medical Center (“WMC”) is issuing this Request for Proposals (“RFP”) to invite interested vendors to submit proposals to supply an assessment of WMC’s current STAR, other quality ratings, and patient satisfaction scores (Ex. Leapfrog, US News, HCAHPS, etc), assessment of the current processes that go into these ratings, identify gaps in the processes, and develop solutions and processes to support the sustainability of these solutions (the “Products”). The proposal should include the following:

- **Evidence of Experience**
  - An overview of the responding organization including experience with this type of work
  - Evidence of the organization’s understanding of the key drivers of quality ratings including the benchmarks used by rating agencies to establish them
  - Evaluation of how the organization would evaluate a high quality ranking hospital
  - An overview of the organization’s ability to provide support to Executive Leadership and Board level presentations on the subjects under review
- **Approach to Assessing WMC’s quality rating and patient satisfaction results**
  - An overview of the organization’s approach to assessing WMC’s current ratings including a detailed evaluation of current processes/procedures, WMC’s current resources to complete this work, data sources and their accuracy, resulting in a gap assessment
  - An overview of the organization’s approach to identifying opportunities and recommended operational and clinical changes to WMC’s systems to improve quality ratings as well as recommendations for resource allocation (people, consultants, etc.), including deliverables at each stage of the approach and timeline for the engagement and implementation of solutions
  - A description of how the work would be accomplished including proposed organization of the teams provided by the responding organization, WMC’s roles and responsibilities in the process proposed, and discussion of impact that might develop from the COVID-19 pandemic on workflow (ex. on-site vs. remote work)
  - Overall cost of the engagement
- **Evidence of Success and Sustainability**
  - Examples of successful engagements with sustainable results, including the timeline to achieve improvement
    - Please include 2-3 references
  - A description of the organization’s tools and technologies (if any) to provide ongoing monitoring of performance, including any interface requirements with Cerner Millennium EHR (or other systems as applicable)
    - What capabilities do the tools/technologies have? What is the cost?
    - How many organizations are current using these tools/technologies?
    - Is there an opportunity to compare to these organizations using the tools?

## 1.2 Background

Westchester County Health Care Corporation (the “Corporation”) is a “public benefit corporation” established by the New York State Legislature pursuant to Article 10-C of the New York Public Authorities Law. On January 1, 1998, the facilities and operations of the Westchester County Department of Hospitals were transferred to the Corporation and the programs,

services and operations of Westchester Medical Center (“WMC”) are now operated by the Corporation. As a public hospital, WMC’s primary mission is to provide high-quality advanced health services to the residents of the Hudson Valley and the surrounding area, regardless of their ability to pay.

WMC is regional tertiary level academic medical center, composed of University Hospital, Maria Fareri Children’s Hospital at WMC, the Behavioral Health Center and MidHudson Regional Hospital of Westchester Medical Center. WMC is licensed for 652 beds, including 415 beds in University Hospital; 136 beds in the Maria Fareri Children’s Hospital at WMC; and 101 beds in the Behavioral Health Center that provides inpatient and outpatient psychiatric services and also hosts a Mobile Crisis Intervention Service and has its own emergency room and observation unit that provides 24-hour emergency crisis service.

WMC is the primary teaching affiliate of New York Medical College (“NYMC”). Both facilities are located on the Valhalla Campus in Valhalla, New York. WMC is the only tertiary and quaternary care facility in the Hudson Valley offering such specialty services as kidney transplant, heart transplant, liver transplant, and regional neonatal and pediatric intensive care units, level 1 trauma, and burn services. Situated on approximately 100 acres, WMC is home to one of the most highly regarded cardiology and cardiac surgery programs on the East Coast. WMC also sponsors a hospital-based medevac helicopter service responding in minutes to accident scenes and carrying critical inter-hospital patient transfers throughout the region.

### **1.3 Designated Contact**

State Finance Law Sections 139-j and 139-k (the “Procurement Requirements”) restrict communications between WMC and vendors responding to RFPs. EXCEPT AS OUTLINED BELOW, FROM THE DATE THIS RFP ISSUED UNTIL THE TENTATIVE AWARD AND APPROVAL OF ANY CONTRACT (THE “RESTRICTED PERIOD”) ALL COMMUNICATIONS BETWEEN VENDORS AND WMC REGARDING THIS RFP, MUST BE CONDUCTED ONLY WITH REPRESENTATIVES IDENTIFIED BY WMC AS “DESIGNATED CONTACTS.”

The Designated Contact(s) for this RFP are:

**Inderjeet Sandhu-Gay**  
**Vice President, Network Strategy**  
**100 Woods Road, C-115**  
**Valhalla, NY 10595**  
**Inderjeet.sandhu-gay@wmchealth.org**

#### **A. Exceptions: Permissible Contacts.**

In certain limited circumstances, it is permissible for vendors to communicate with WMC representatives other than the Designated Contacts about the RFP. These Permissible Contacts include:

- Submission of written proposals;
- Written complaints by a prospective vendor to WMC’s General Counsel regarding the failure of WMC to timely respond to authorized contacts by vendors;
- Participation in RFP conferences or interviews;
- Negotiations following the tentative award of a contract;
- Requests to review the award of a contract; and
- Legal or administrative proceedings regarding the award of a contract.

#### **B. Record of Contacts.**

As required by § 139-k of the State Finance Law, WMC will record information about contacts with vendors during the Restricted Period. Information recorded by WMC will include but not be limited to the name, address, telephone number,

place of principal employment and occupation of the person or entity making the contact. All recorded information concerning contacts made during the Restricted Period will become part of the procurement record for this RFP.

**C. Responsibility of Proposer.**

WMC will review whether vendors’ contacts with WMC were made in accordance with the terms of this Section 1.3 or otherwise qualify as a Permissible Contact under the State Finance Law. A finding that a vendor has knowingly and willfully violated the terms of State Finance Law §§ 139-j and 139-k may result in a determination that such vendor is not a “responsible” proposer. Such a determination will be considered by WMC in its assessment of whether a vendor is qualified to supply the Products described in this RFP.

**D. Disclosure of Non-Responsibility.**

All proposers must disclose to WMC, on the Disclosure of Prior Non-Responsibility Determinations Form attached hereto as **Attachment D**, any finding of non-responsibility made by a governmental entity within the previous four (4) years based on either impermissible contacts under § 139-j of the State Finance Law or the intentional provision of false or incomplete information to a governmental entity. Failure of any proposer to timely disclose a finding of non-responsibility or the submission of any intentionally false or incomplete information may result in the rejection of a proposal, the cancellation of a contract award, or if such contract has been executed, the immediate termination of the contract.

**E. Written Affirmation.**

Each proposer must submit a written affirmation, in the form attached hereto as **Attachment E**, as to the proposer’s understanding and agreement to comply with WMC’s procedures relating to Permissible Contacts. The affirmation must be completed and signed by a corporate officer or Principal of the proposer. Proposals that do not contain a signed original affirmation will be rejected.

**1.4 Key Events/Timeline**

<b>Event</b>	<b>Date</b>
<b>RFP Release</b>	August 17, 2020
<b>Proposal Due Date</b>	September 14, 2020
<b>Anticipated Notice of Tentative Award</b>	September 21, 2020
<b>Anticipated Contract Start Date</b>	October 5, 2020

## 2. RFP Instructions

### 2.1 Letter of Intent

Vendors interested in responding to the RFP are encouraged to submit a Letter of Intent to Propose to the Designated Contact(s) by **August 28, 2020**. Letters of Intent to Propose shall be non-binding.

### 2.2 Addenda to RFP

In the event it becomes necessary to revise any part of this RFP or extend any deadline listed herein, WMC will issue an addenda to the RFP and post it to on the Procurement Opportunities page of the Westchester Medical Center website: <http://www.worldclassmedicine.com/body.cfm?id=1330>.

### 2.3 Cost of Proposals

Proposers shall not be reimbursed for any costs or expenses incurred in the preparation or submission of proposals or the attendance of RFP conference or interview. All costs associated with a proposer's response to this RFP shall be borne by the proposer.

### 2.4 Proposal Format and Content

Proposals should provide a straightforward complete and concise description of the vendor's capabilities to satisfy the requirements of the RFP. Proposals must state the assumptions made when preparing the proposal. Proposals must include but need not be limited to:

#### A. Title Page and Table of Contents.

- A title page that identifies the RFP for which the proposal is being submitted, states the proposer's name, and lists the name, address and telephone number of the proposer's contact person(s).
- A table of contents that identifies each numbered section of the proposal according to the proposal format set forth herein.

#### B. Transmittal Letter.

- A transmittal letter, which shall be considered an integral part of the proposal, shall be signed by the individual or individuals authorized to bind the firm contractually. An unsigned proposal may be rejected. The letter shall include the following:
  - Transmittal letter must indicate the signer is so authorized to sign the proposal and the contract, and must include the title or position the signer holds in the proposer's firm.
  - If the signer is not the contact person identified on the title page, also include the address and telephone number of the authorized signatory.
  - A statement as to the willingness of the proposer's firm to enter into a contractual agreement containing, at a minimum, the terms and conditions set forth in **Attachment B** of this RFP. In accordance with Section 6 of this RFP, any exceptions to these terms and conditions must be explicitly stated in a separate section of the proposal.

#### C. Proposer's Background and Experience.

- Provide a background description of the proposer's firm, including but not limited to the date the company was organized and, if proposer is a corporation, when and where it is incorporated.
- A history of the vendor's experience supplying the Products sought by this RFP.
- Provide the most recent 6-month purchase history for WMC, if applicable.

#### D. Price Proposal.

- Proposer must submit their price proposal using the worksheets attached hereto as Exhibit A.

- All worksheets are considered mandatory parts of the application and must be complete for the price proposal to be considered for this procurement.
- Do not leave any entry in the worksheet blank or empty. Where appropriate, enter a zero (0) or "N/A".

**E. Attached Forms.**

- All proposals must include completed copies of the forms annexed hereto as **Attachments A, C, D, E, and F.**

## **2.5 Submission of Proposal**

Proposers must email copies of their proposal no later than 4:00 PM Eastern Standard Time on **September 14, 2020** to the Designated Contacts identified in Section 1.3. Proposals received after this time and date will not be considered. WMC is not responsible for any internal or external delivery delays that may cause a proposal to arrive at the prescribed address after the deadline.

## **3. Administrative Information**

### **3.1 Method of Award**

The award will be made on the basis of best value (the proposal which optimizes, quality, cost, and efficiency) to the most responsive and responsible proposer as determined in the evaluation process. The contract will not be awarded solely on the basis of lowest cost. Instead, the award will be made to the respondent(s) whose proposal receives the highest overall evaluation score based on the criteria state herein. WMC may contract with one or more proposers as a result of this RFP.

All proposals received in accordance with Section 2.6 will be reviewed and evaluated. Incomplete proposals and proposals that do not meet the minimum requirements will be rejected.

Proposers may be requested by WMC to clarify contents of their proposals. Other than to provide such information as may be requested by WMC, including but not limited to best and final offers, no proposer will be allowed to alter its proposal or add new information after the final submission date and time.

### **3.2 Reservation of Rights**

WMC reserves the right to:

- Reject any or all proposals received in response to the RFP;
- Withdraw the RFP at any time, at the agency's sole discretion;
- Make an award under the RFP in whole or in part;
- Pursue supply of any or all of the Products described herein from alternate sources;
- Disqualify a proposer whose conduct and/or proposal fails to conform to the requirements of the RFP;
- Seek clarifications and revisions of proposals;
- Require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a proposer's proposal and/or to determine a proposer's compliance with the RFP requirements;
- Prior to the opening of proposals, amend the RFP specifications to correct errors or oversights, or to supply additional information about the products sought as such information becomes available;
- Prior to the opening of proposals, direct proposers to submit proposal modifications addressing subsequent amendments or addenda to the RFP;
- Change any date set forth in this RFP;
- Waive any informalities or any non-material requirements of the RFP;

- Negotiate with the successful proposer within the scope of the RFP in the best interests of WMC;
- Require proposers to submit best and final offers (“BAFOs”);
- Award contracts to more than one successful proposer;
- Negotiate with selected proposers prior to contract award;
- Make any payment contingent upon the submission of specific deliverables; and
- Require that all offers be held open for a period of 120 days unless otherwise expressly provided for in writing.

### **3.3 Confidentiality of Proposals**

Confidential, trade secret, or proprietary materials must be clearly marked and identified as such upon submission by the proposer. Proposers must provide specific justification as to why disclosure of particular information in the proposal would cause substantial injury to the competitive position of the proposer.

Properly identified information that has been designated confidential, trade secret, or proprietary by the proposer will not be disclosed except as may be required by the Freedom of Information Law or other applicable state or federal laws. In the event that WMC determines that the law requires that confidential information be disclosed, WMC will notify the proposer so that it may take whatever steps it deems appropriate.

### **3.4 Non-Discrimination Policy**

It is the policy of WMC to comply with all federal, state, and local laws, policies, orders, rules and regulations that prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability, or and marital status and to encourage the meaningful and significant participation at all levels (proposer, Subcontractor, Suppliers and others) for business enterprises owned by persons or color and women – Minority Business Enterprise (MBE) and Women Business Enterprise (WBE).

The proposer is encouraged to use its reasonable efforts to encourage, promote, and increase participation of business enterprises owned and controlled by persons of color or women (MBE/WBE) in the products sought by this RFP and to develop a policy to efficiently and effectively monitor such participation.

## **4. Evaluation Factors for Awards**

### **4.1 Proposal Evaluation - Overview**

WMC’s mission is to provide the highest quality of care to its patients. To this end, WMC seeks vendors who will provide quality products and services at competitive prices in a manner that exhibits the highest level of ethics and professionalism. Accordingly, in addition to evaluating a proposer’s ability to meet the pricing criteria described in Section 5, WMC will also evaluate proposals based on: proposer’s financial and operational stability, experience supplying the Products, the reliability, efficiency, and safety of the vendor’s Products, and compatibility of the vendor’s Products with other elements of patient care. Proposals will also be reviewed for adequacy and completeness. WMC reserves the right to disqualify a proposer if, in WMC’s sole opinion, the proposal does not satisfy any or all of the evaluation criteria.

### **4.2 Notification of Award**

Successful proposer(s) will be advised by WMC through a letter of tentative award.

## **5. Pricing Program**

### **5.1 Introduction**

WMC has undertaken a comprehensive review of patient outcomes, Product pricing, and financial performance of its departments. The purpose of this pricing program is to manage device/supply costs while preserving patient outcomes and physician choice. Pricing will be structured on a component and system basis.

## **6. Contract Overview**

## **6.1 Contract Provisions**

The contract will incorporate provisions of this RFP and portions of the successful proposal to which WMC agrees. The final contract will also include the WMC Standard Terms and Conditions set forth in **Attachment B** and any applicable riders or other information deemed appropriate by WMC. The properly executed contract shall supersede all proposals, whether written or oral, and any and all negotiations, conversations, and discussions prior to execution of the contract.

Final contracts executed pursuant to this RFP shall be subject to WMC purchasing policies and procedures and the review and approval of WMC's Office of Legal Affairs.

## **6.2 Term of Contract**

The proposed term of any new agreement executed pursuant to this RFP is a period of **six months** commencing on or about **October 5, 2020**.

## **6.3 Firm Pricing**

Product pricing will have an effective date of **October 5, 2020**. The pricing of Products supplied pursuant to this RFP shall be held firm for the term of the Agreement.

## **6.4 Prior Approval of New Products and Technology**

Any new products or technology not included in the Proposal that is introduced after **October 5, 2020** must be approved in writing by WMC administration prior to the sale, consignment, or other supply of such products to WMC. Pricing must also be pre-approved. Any such products introduced without prior approval of WMC administration will not be reimbursed or will be reimbursed at the existing item or system price at WMC's discretion.

Vendor shall obtain WMC's prior written approval as to the make, model, and price of any product not included on the Price Schedule as of the Effective Date of this Agreement before selling, consigning, or otherwise supplying such product to WMC. Any product sold, consigned, or otherwise supplied to WMC without WMC's prior approval shall not be reimbursed or shall be reimbursed at the existing item or system price at WMC's discretion.

## **6.5 Acceptance of Terms and Conditions**

Vendor must acknowledge that it has read the WMC Standard Terms and Conditions, as set forth in **Attachment B**, and that it understands and agrees to be bound by the same, with noted exceptions. Vendor must provide a separate document of exceptions, if any, taken to the WMC Standard Terms and Conditions. Each exception must reference a specific numbered paragraph of the Standard Terms and Conditions. Vendor shall state a proposed alternative to each exception taken when stating that the term or condition is "unacceptable." Any exceptions to WMC Standard Terms and Conditions may disqualify a vendor's proposal.

## **6.6 Disposition of Proposals**

All proposals received by the due date become the property of WMC and shall not be returned. Any successful proposal may be incorporated into the resulting contract and will become public record. Any proposals received after the due date will be returned to the proposer unopened.

## Price Proposal Worksheets

Not applicable

## WMC Standard Terms and Conditions

### ARTICLE I DEFINITIONS

- 1.1. Agreement. "Agreement" shall mean the written agreement between WMC and the successful proposer, if any, awarded a contract to supply the Products sought by this RFP.
- 1.2. Products. "Products" shall mean **the proposal submitted by the responding organization**.
- 1.3. Vendor Representative. "Vendor Representative" shall mean all employees, consultants, agents, subcontractors or representatives of Vendor providing services on behalf of Vendor at any WMC site.

### ARTICLE II PRICING PROGRAM

- 2.1. Pricing Program. Purchase prices for Products supplied pursuant to the Agreement shall be based on a price list mutually agreed upon by WMC and Vendor and set forth in a Price Schedule attached to the Agreement. The Price Schedule shall be applied to WMC purchases at the item and system levels. The pricing set forth in Price Schedule shall be effective as of **October 5, 2020** and shall be held firm for the Term of this Agreement.
- 2.2. New Products or Technology. Vendor shall obtain WMC's prior written approval as to the make, model, and price of any Product not included on the Price Schedule as of the Effective Date of the Agreement before selling, consigning, or otherwise supplying such product to WMC. Any product sold, consigned, or otherwise supplied to WMC without WMC's prior approval shall not be reimbursed or shall be reimbursed at the existing item or system price at WMC's discretion.

### ARTICLE III ORDERING, DELIVERY AND PAYMENT

- 3.1. Purchase Orders. Vendor acknowledges that all Products must be purchased pursuant to a purchase order issued by WMC for the specific Product. Purchase orders issued by WMC shall expire 180 days from the date of issue, unless WMC, at its sole option, has made alternate arrangements with the Vendor to extend same.
- 3.2. Delivery. Deliveries must be made as ordered. The specific quantity ordered must be delivered in full, unless otherwise specified by WMC. If delivery instructions do not appear on the purchase order, the purchase order shall be deemed to require prompt delivery.
- 3.3. Risk of Loss. All shipments shall be F.O.B. Destination or delivery address noted on the purchase order. Until actual receipt of the Products by WMC, the Vendor shall bear any and all risk of loss or damages relating to the Products. The Vendor shall be fully responsible for the security, safe storage, warehousing, unloading, delivery, receipt, and insurance of the Products and shall be solely liable in the event that the Products are delivered in unacceptable condition or are otherwise damaged or lost. Title and risk of loss shall not pass from Vendor to WMC until the Products have been accepted by WMC in accordance with Section 3.5.
- 3.4. Inspection. Products purchased under the Agreement are subject to WMC's right to inspect and reject non-conforming or defective goods. WMC reserves the right to reject and refuse defective Products, an unauthorized quantity of Products, and Products that are not in accordance with the specifications set forth in WMC's purchase order or with Vendor's expressed or implied representations or warranties. Rejected Products may be returned to Vendor, or held by WMC for Vendor's instructions, at Vendor's risk and expense.
- 3.5. Acceptance. Except for Products that cannot be inspected until opened for use, acceptance of the Products by WMC shall be deemed to occur upon the earliest of five (5) business days after delivery or WMC's confirmation to the Vendor of acceptance of delivery.

- 3.6. Payment Terms. WMC shall pay all properly submitted and undisputed invoices for the Products within ninety (90) days from the date WMC receives an invoice. All invoices must reference the Contract Number and are to be addressed to WMC, at WMC address provided in each purchase order, to the Attention of the Accounts Payable Department.
- 3.7. Electronic Payments. Vendor hereby agrees to enroll in and to accept all payments for goods, products, or equipment supplied, services rendered, or any other fee or charge due and payable to Vendor by WMC pursuant to this Agreement via WMC's electronic payment program (the "ePayables Program") without any additional fees or restrictions. The ePayables Program is a streamlined, paperless payment process for WMC's vendors and suppliers operated by financial and/or e-commerce partners engaged by WMC.
- 3.8. Interest and Other Charges. Any references in any Vendor quotation, invoice or agreement to interest charges, late fees, restocking fees or cancellation charges shall be excluded from and superseded by the Agreement.
- 3.9. Taxes. WMC and its facilities are exempt from local, state, and federal taxes (including local and state sales or use taxes). Upon request, WMC will furnish evidence of such tax-exemption. WMC shall not be charged or subject to, and shall not pay, any tax, tariff, duty, cost or expense imposed by any taxing authority outside the United States of America and any such tax, tariff, duty, cost, or expense shall be the sole responsibility of the Vendor.

**ARTICLE IV  
SERVICE**

- 4.1. Provision. The Vendor shall, in consideration of the charges, rates and fees described herein, provide the services as more particularly described in **the Price Schedule**, attached hereto and made a part hereof ("Services").
- 4.2. Warranty. The Services shall be performed in a manner consistent with the generally recognized standards of persons regularly engaged in providing such services. Vendor warrants to the Customer that any Services performed and any materials used by Vendor in connection with the Services shall be free from defects in workmanship and/or materials and agrees that any damage arising from any breach of this warranty shall promptly be remedied by Vendor at its sole expense.
- 4.3. Scheduling. Unless otherwise specifically set forth in **the Price Schedule**, the exact dates, times and locations for the provision of the Services will be mutually determined by the Parties and confirmed in writing.
- 4.4. Equipment, Materials, and Supplies.
- 4.4.1. Provision of Equipment, Material and Supplies. Vendor shall provide at its expense all tools, equipment, materials and supplies required in performing any Services hereunder, except for tools, equipment, material and supplies, if any, to be provided or paid for by the Customer.
- 4.4.2. Use and Storage on Customer's Premises. Any tools, equipment, materials, supplies or other personal property of Vendor used, held or stored on Customer's premises shall be at the sole risk of Vendor and Customer shall not be liable for any loss thereof or damage thereto for any reason whatsoever.
- 4.4.3. Material Safety Data Sheet; Hazardous Materials. All materials and supplies shall be clearly labeled and, if applicable, shall have the Material Safety Data Sheet affixed to the outside of the container. Vendor represents and warrants that it will not, at any time, store any hazardous materials on, in, or near Customer's premises.
- 4.4.4. Removal of Equipment, Material and Supplies. Upon termination of this Agreement for any reason, Vendor shall immediately remove all of its property from the Customer's premises and any property not so removed may be removed by the Customer at Vendor's expense.

Custody of Customer's Property. In the event that Vendor shall, by virtue hereof, have custody of any Customer property, the Vendor shall be deemed to be an insurer thereof and shall be responsible for its safe return to Customer. The Vendor shall carry any insurance, at its expense, reasonably deemed necessary to cover any damage or loss of Customer's property in the custody of Vendor.

**ARTICLE IV  
TERM AND TERMINATION**

- 4.1. Term. The Agreement shall commence on the Effective Date of the Agreement and shall continue for a period of (1) year and shall automatically renew for four (4) one (1) year periods, unless earlier terminated in accordance with this Article III.
- 4.2. Termination for Cause. Either Vendor or WMC shall have the right to immediately terminate the Agreement in its entirety in the event of a material breach of the terms of the Agreement by the other party which is not cured within thirty (30) calendar days following receipt of written notice specifying the breach.
- 4.3. Termination Without Cause. Either Vendor or WMC shall have the right to terminate the Agreement in its entirety without cause by providing the other Party at least thirty (30) days prior written notice.
- 4.4. Insolvency. If either Party shall be declared insolvent or shall make an assignment for the benefit of creditors, or if a receiver or trustee shall be appointed of, or for, either Party's property or business, the Agreement may be terminated, at the other Party's option, without liability hereunder.
- 4.5. Remedies. Termination by either Party pursuant to the terms of this Article III, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights against the other Party that arose prior to termination.
- 4.6. Disruption of Patient Care. Notwithstanding the foregoing or any other Agreement between the Parties, if Vendor terminates the Agreement or any provision hereof and such termination, based on the reasonable, good faith determination of WMC, would likely result in the disruption of patient care, upon written notice from WMC as to such likely disruption, Vendor shall continue to provide the Products purchased hereunder and receive compensation, as specified in the Agreement or applicable purchase order and in accordance with Article II hereof, until WMC has secured an alternate supplier of comparable or substantially similar goods, but in no event shall such continued provision of the Products exceed a period of one hundred and twenty (120) days from Vendor's receipt of WMC's notice.

**ARTICLE V  
GENERAL PROVISIONS**

- 5.1. Confidentiality. For purposes of this Section 5.1 "Confidential Information" shall mean any and all proprietary information, customer lists, patient information, WMC purchasing requirements, trade secrets, know-how, processes, documentation and all other information without limitation which is not generally known to, or readily ascertainable by proper means, by the public or which might reasonably be considered confidential, secret, sensitive, proprietary or private to either the Vendor or WMC.
  - 5.1.1 In performing their respective obligations under this Agreement, the Vendor and the Customer may come into contact with, be given access to, and, in some instances, contribute to each other's Confidential Information. In consideration of permitting the Vendor and WMC to have access to each other's Confidential Information, during the Term of this Agreement, the Vendor and the Customer agree that they will not disclose to any third party any Confidential Information of the other Party, except as provided in Section 4.1.3, without the other Party's prior written consent. The Vendor and the Customer shall only make the Confidential Information of the other Party available to its employees, auditors, attorneys, representatives of Customer's group purchasing organization, or other professionals or consultants hired or otherwise engaged by such Party, to the extent that their duties, requirements, or contract for services

require such disclosure, and agree to take appropriate action by instruction or agreement with such individuals permitted access to the Confidential Information to satisfy the obligations under this Section.

- 5.1.2 The provisions of this Section will not apply to information: (i) developed by the receiving Party without use of, or access to, the disclosing Party's Confidential Information; (ii) that is or becomes publicly known without a breach of the Agreement; (iii) disclosed to the receiving Party by a third party not required to maintain such information confidential; or (iv) that is already known to the receiving Party at the time of disclosure. The provisions of this Section 5.1.2 shall not apply to "Protected Health Information" as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations, 45 C.F.R. Parts 160 and 164.
- 5.1.3 If any law, governmental authority or legal process requires the disclosure of Confidential Information, the subject Party may disclose such information, provided, that, the other Party is notified of the disclosure.
- 5.2. Disclosure of Protected Health Information (PHI). If the transaction involves any disclosure of PHI to the Vendor, and the Vendor is determined to be a Business Associate (as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations, 45 C.F.R. Part 160 and 164), the Vendor will execute a WMC Business Associate Agreement.
- 5.3. Business in Confidence. Neither Party shall, without first obtaining the written consent of the other Party, advertise or publish the fact that Vendor has contracted to provide, or WMC has contracted to purchase, the Products that are the subject of the Agreement.
- 5.4. Publicity and Trademarks. Each Party will not, and will cause its affiliates not to, use the name or any trademark or service mark of the other Party or any of its affiliates without the prior written consent of the other Party.
- 5.5. Financing Statements. The Vendor acknowledges and agrees that the filing of any financing statement under the Uniform Commercial Code in connection with any transaction related to the Agreement is expressly prohibited unless such filing is agreed to in writing by the Chief Financial Officer of WMC or such filing is for notification purposes with respect to custodial or other arrangements not intended as a secured transaction in which case such financing statements must expressly state: "This financing statement is filed for notice purposes only and the filing thereof shall not be deemed to create, or to constitute evidence of, a security interest under the Uniform Commercial Code."
- 5.6. Safe Harbor Discount. Each Party agrees to comply at all times with the regulations issued by the United States Department of Health and Human Services published at 42 C.F.R. Part 1001, and which relate to the Vendor's obligation to report and disclose discounts, rebates, and other reductions to WMC for Products purchased under the Agreement. Where a discount or other reduction in price of the Products is applicable, the Vendor agrees to comply with the requirements of 42 U.S.C. §1320a-7b(b)(3)(a) and the "safe harbor" regulations regarding discounts or other reductions in price set forth at 42 C.F.R. §1001.952(h). In this regard, the Vendor will satisfy any and all requirements imposed on sellers by the safe harbor and WMC will satisfy any and all requirements imposed on buyers by the safe harbor. Thus, in cases where the Vendor forwards to WMC an invoice that does not reflect the net cost of Products to WMC, the Vendor shall include the following language, or reasonably comparable language, on such invoice: "This invoice does not reflect the net cost of supplies or services to the Medical Center. Any additional discounts or other reductions in price may be reportable under federal regulations at 42 C.F.R. §1001.952(h)." In cases where the Vendor forwards to WMC an invoice that does reflect a net cost of the Products after a discount to WMC, the Vendor shall include the following language, or reasonably comparable language, on such invoice: "This invoice reflects the net cost of Products to the Medical Center. This price constitutes a 'discount or other reduction in price' and may be reportable under federal regulations at 42 C.F.R. §1001.952(h)."
- 5.7. Government Health Program Participation. Each Party represents that it has not been excluded from participating in any "federal health care program," as defined in 42 U.S.C. § 1320a-7b(f), or in any other federal or state government payment program and that it is eligible to participate in the foregoing programs. If either Party is excluded from participating in, or becomes otherwise ineligible to participate in, any such program during the term of the Agreement, such Party will notify the other Party of that event within thirty (30) days. Upon

occurrence of that event, whether or not such notice is given, either Party may terminate the Agreement effective upon written notice to the other Party.

- 5.8. Debarment. Vendor represents that (i) it has not been convicted of a criminal offense related to health care, and (ii) it is not currently listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded health care programs; Vendor has conducted a search of the Excluded Parties List System on the System for Award Management website (<https://www.sam.gov/portal/SAM/#1>) or a search of the Exclusions Database on the Office of Inspector General website (<https://exclusions.oig.hhs.gov/default.aspx>) and has attached to this Agreement a print out of a “no search results,” indicating that Vendor is not currently excluded. Vendor shall notify Customer immediately, in writing, of any change in this representation during the term of this Agreement. Such change in circumstances shall constitute cause by Customer to immediately terminate this Agreement. For purposes of this paragraph, Vendor is defined as the entity entering into this Agreement, and/or its principals, employees, directors and officers and shareholders (provided that if Vendor is publicly traded, the term “Vendor” shall not include shareholders owning less than five (5%) percent of the outstanding share of the publicly traded entity).
- 5.9. Personal Inducements. The Vendor represents and warrants that no cash, equity interest, merchandise, equipment, services or other forms of remuneration have been offered, shall be offered or will be paid or distributed by or on behalf of the Vendor to WMC or the New York Medical College or any physician or physician practice privileged or affiliated with either of them and/or the employees, officers, or directors of any of the foregoing and their immediate family members as an inducement to purchase or to influence the purchase of Products by WMC from the Vendor. In addition to any other remedy to which WMC may be entitled and any other sanction to which a Vendor may be liable for a breach of the foregoing representation and warranty, WMC, at its option, may declare any agreement between the Vendor and WMC null and void.
- 5.10. Compliance with Laws and Regulations. In the performance of their duties and obligations hereunder, each Party warrants that it shall comply with all applicable federal and state laws and regulations, including without limitation the Federal Food, Drug and Cosmetic Act, the Prescription Drug Marketing Act, equal-opportunity laws, and fraud and abuse laws. The Vendor further warrants that all Products purchased pursuant to the Agreement will conform and comply with all applicable provisions of governing laws, ordinances, rules and regulations. The Vendor shall obtain and maintain in full force and effect during the term of the Agreement all licenses, permits, certificates and accreditations as may be required by law or regulation. The Vendor agrees that in the event it receives any written notice of non-compliance with any statute or regulation from any federal or state agency that may materially affect the Vendor’s performance hereunder, the Vendor will promptly notify WMC in writing of the receipt of such notice and the nature of such notice.
- 5.11. Access to Books and Records. To the extent required by law, WMC and Vendor agree to comply with the Omnibus Reconciliation Act of 1980 (P.L. 96-499) and its implementing regulations (42 CFR, Part 420). Vendor further specifically agrees that until the expiration of four (4) years after furnishing Products pursuant to the Agreement, the Vendor shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, the Agreement and the books, documents and records of the Vendor that are necessary to verify the nature and extent of the costs charged to WMC hereunder. The Vendor further agrees that if Vendor carries out any of the duties of the Agreement through a subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives the subcontract, and books and documents and records of such organization that are necessary to verify the nature and extent of such costs.
- 5.12. Dispute Resolution. Upon the agreement of both Parties, any dispute as to the performance of a Party’s obligations under the Agreement or any related matter may be referred to non-binding mediation by a neutral third party, the rules and procedures of which shall be mutually agreed to by the Parties. Nothing in this paragraph shall be construed to prevent or delay either Party from exercising, at any time, any and all legal rights available to it in a court of competent jurisdiction. No offer, finding, action, inaction or recommendation made or

taken in or as a result of mediation shall be considered for any purpose as an admission of a Party, nor shall it be offered or entered into evidence in any legal proceeding.

- 5.13. Governing Law and Venue. The Agreement shall be construed, and its performance enforced, under New York law without regard to conflicts of laws principles. The exclusive venue for the purposes of any action, suit or proceeding related to or arising directly or indirectly out of the Agreement shall be in the New York Supreme Court located in Westchester County, New York or the United States District Court for the Southern District of New York. To the fullest extent permitted by law, each party waives trial by jury in any action, proceeding or counterclaim brought by or on behalf of either Party with respect to any matter relating to the Agreement.
- 5.14. Attorney's Fees. If any action or proceeding is commenced by either Party for the enforcement of or in connection with the Agreement, each Party shall be responsible for its own attorneys' fees, costs, and disbursements incurred in connection with such action.
- 5.15. Limitation of Liability. The liability of the Parties to each other for damages in connection with the Agreement, regardless of the form of action, shall not exceed the actual damages incurred by the Party seeking redress. Neither Party shall be liable to the other for any special, consequential, punitive, or exemplary damages arising from the Agreement, including but not limited to damages for loss of future business and/or lost profits. This provision shall not apply to claims raised by third parties against the Vendor or WMC, or, to claims in which either Party joins the other as a third party defendant.
- 5.16. Insurance. The Vendor will maintain product liability and general public liability insurance against any insurable claims that are reasonably likely to arise regarding the Products purchased from the Vendor.
- 5.17. Indemnity.
- 5.17.1 Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party, and its officers, directors, employees, agents, successors, and assigns for, from and against any claim or action brought against, arising out of the acts or omissions of the indemnifying Party, its employees or agents.
- 5.17.2 Indemnification for Product Defect; Infringement. The Vendor, at its sole cost and expense, agrees to indemnify and hold harmless WMC, its officers, directors, employees, and agents, against any claim, action, suit, or settlement for loss, cost, damages, expense, or liability (including reasonable attorneys fees) made by any person or entity, other than WMC, arising out of: (i) Any allegation that WMC's use of a Product in accordance with the Vendor-approved labeling resulted in bodily injury; (ii) Any claim that a Product infringes the intellectual property of any other person or entity including any United States or Foreign Letters Patent or Copyright or any Trademark; and (iii) Any claim of product defect. The Vendor will not be required to indemnify WMC to the extent of any claim arising out of negligence or willful misconduct by WMC; use of a Product by any person or entity other than in accordance with the Vendor-approved labeling; or breach by WMC of its obligations under this Agreement.
- 5.17.3 Notice. It is a condition to each Party's obligations under this Section 5.17 that the Party seeking indemnification notify the indemnifying Party promptly of the claim, permit the indemnifying Party to control the litigation and settlement of that claim, and cooperate with the indemnifying Party in all matters related thereto, including by making its documents, employees and agents available as reasonably necessary.
- 5.17.4 Consent to Settlement. The indemnifying Party may not settle any claim without the consent of the other Party unless there is no finding or admission that the other Party has violated any law or the rights of any person or entity and the sole relief provided is monetary damages that the indemnifying Party pays in full or injunctive relief enforceable only against the indemnifying Party.
- 5.18. Representative Access. WMC reserves the right to require and Vendor shall upon the request of WMC ensure that any Vendor Representative that will have access to clinical areas of WMC's facility shall undergo a pre-placement assessment of health status to make certain that they are free from health impairment which is of potential risk to patients and personnel as indicated by a recorded medical history, physical examination, immunizations and laboratory testing.

- 5.19. Conflicts of Interest. The Vendor represents, to the best of its knowledge, that no employee, officer, or director of, and no physician or physician practice affiliated with, WMC has a financial interest in the Vendor. The Vendor further agrees that if it discovers or otherwise becomes aware that an employee, officer, or director of, or a physician or physician practice affiliated with, WMC has a financial interest in the Vendor, Vendor shall promptly disclose that financial interest to WMC in writing. To the extent that a financial interest is disclosed by Vendor in accordance with this Section, the Parties agree to make good faith efforts to resolve any conflict of interest, provided however, in the event that such conflict of interest cannot be resolved, WMC, at its option, may declare any agreement between the Vendor and WMC null and void.
- 5.1.1 Financial Interest. For purposes of this Section, the term “financial interest” shall include the following transactions or relationships: (a) payment of fees including consulting fees, royalty fees, honoraria, or other emoluments or “in kind” compensation; (b) any gift of more than nominal value; (c) service as an officer or director of Vendor whether or not remuneration is received for such service; or (d) an ownership interest in Vendor, except that a shareholder owning less than a majority of shares of a publicly traded entity shall not be deemed to have a financial interest for the purposes of this Section.
- 5.20. Survival. All provisions regarding confidentiality, indemnification, warranty, liability and limits on liability shall survive termination of the Agreement.
- 5.21. Force Majeure. Neither Party shall be deemed to be in default of or to have breached any provision of the Agreement as a result of any delay or failure in performance due to reasons beyond such Party’s reasonable control. If such a delay occurs, the affected Party may extend the time for performance by a period of time equal to the delay. Notwithstanding the foregoing, if a force majeure event is claimed by either Party and such event continues for more than fifteen (15) business days, either Party shall have the right and option to terminate the Agreement.
- 5.22. Article 15-A and the MWBE Regulations. Vendor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women’s Business Development of the Department of Economic Development (the “Division”). If the terms or provision of this Agreement conflict with applicable law or regulations, such laws and regulations shall supersede such terms or provisions.
- 5.23. Entire Agreement. The Agreement shall constitute the entire agreement between the Parties concerning the subject matter of the Agreement and will supersede all prior negotiations and agreements between the Parties concerning the subject matter of the Agreement. The terms of any purchase order, invoice, or similar documents used to implement the Agreement shall be subject to and shall not modify the Agreement.
- 5.24. Amendment. The Agreement may only be amended by written agreement of the Parties.
- 5.25. Assignment. Neither Party may assign any of its rights or obligations under the Agreement, either voluntarily or involuntarily (whether by merger, consolidation, dissolution, operation of law, or otherwise), without the prior written consent of the other Party. Any purported assignment in violation of this Section will be void. Any request for consent to an assignment to an affiliate of a Party (i.e. an entity that controls, is controlled by, or is under common control with a Party) shall not be unreasonably withheld, conditioned, or delayed by the consenting Party.
- 5.26. Relationship of the Parties. For purposes of the Agreement, each Party will be an independent contractor. The Agreement will not create a partnership, association, or other business entity. Neither Party has any authority to act for or to bind the other.
- 5.27. Waiver. No provision of the Agreement may be waived except by a writing signed by the Party against whom the waiver is sought to be enforced. No failure to enforce any provision of the Agreement constitutes a waiver of future enforcement of that provision or of any other provision of the Agreement.
- 5.28. Other Contractual Obligations. Each Party represents that it is not prohibited from entering into, or performing its obligations under, the Agreement by the terms of any other agreement.
- 5.29. Counterparts. The Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. The Parties agree to accept and be bound

by facsimile or PDF transmitted copies of the Amendment and its counterparts including facsimile or PDF signatures of the Parties.

## Vendor Debarment/Exclusion Questionnaire

1. Are you or your company or any of its employees currently ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate?

Yes \_\_\_\_\*      No \_\_\_\_

\* **If you answered Yes**, please provide a complete explanation on an attached sheet of paper.

2. Have you or your company or any of its employees been convicted of any of the following offenses: program-related crimes, crime relating to patient abuse, felony conviction relating to health care fraud, or felony conviction relating to controlled substances, but have not yet been excluded, debarred, suspended or otherwise declared ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs?

Yes \_\_\_\_\*      No \_\_\_\_

\* **If you answered Yes**, please provide a complete explanation on an attached sheet of paper.

3. If you furnish products/goods/services from other vendors/contractors, do you verify with them at the time of contracting that neither the company nor any of its employees is ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs because of being excluded, debarred, suspended or otherwise declared ineligible to participate?

Yes \_\_\_\_      No \_\_\_\_\*

\* **If you answered No**, and you are awarded this contract, you will be required to undertake this screening for any vendors/contractors that will be providing goods or services pursuant to this contract prior to the effective date of the agreement. Such screening is to be performed utilizing the OIG's List of Excluded Individuals/Entities and the GSA's Excluded Parties Listing System.

4. If you furnish products/goods/services from other vendors/contractors, do you verify with them that neither the company nor any of its employees has been convicted of any of the following offenses: program-related crimes, crimes relating to patient abuse, felony conviction relating to health care fraud, or felony conviction relating to controlled substances, but have not yet been excluded, debarred, suspended or otherwise declared ineligible to participate in Federal health care programs or Federal procurement or non-procurement programs?

Yes \_\_\_\_      No \_\_\_\_\*

\* **If you answered No**, and you are awarded this contract, you will be required to undertake this screening for any vendors/contractors that will be providing goods or services pursuant to this contract prior to the effective date of the agreement. Such screening is to be performed utilizing the OIG's List of excluded Individuals/Entities and the GSA's Excluded Parties Listing System.

## Disclosure of Prior Non-Responsibility Determinations

NEW YORK STATE FINANCE LAW § 139-j AND § 139-k

As a public benefit corporation, Westchester County Health Care Corporation, as operator of Westchester Medical Center, is obligated to obtain specific information regarding prior non-responsibility determinations. In accordance with New York State Finance Law § 139-k, a proposer must be asked to disclose whether it has been subject to a finding of non-responsibility within the previous four (4) years by a Government Entity<sup>1</sup> due to: (a) a violation of New York State Finance Law § 139-j; or (b) the intentional provision of false or incomplete information to a Governmental Entity. This form is to be completed and submitted by the individual or entity seeking to enter into a contract pursuant to this Request for Proposals.

Name of Proposer: \_\_\_\_\_

Proposer Address: \_\_\_\_\_

\_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

Date: \_\_\_\_\_

1. Has any Government Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the contract awarded in connection with this procurement in the previous four (4) years?

Yes\_\_

No\_\_

If yes, please answer the following questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j?

Yes\_\_

No\_\_

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?

Yes\_\_

No\_\_

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below:

\_\_\_\_\_

<sup>1</sup> “Governmental entity” means: (1) any department, board, bureau, commission, division, office, council, committee or officer of the State of New York, whether permanent or temporary; (2) each house of the state legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) a public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) municipal agency, as that term is defined in paragraph (ii) of subdivision (s) of section one-c of the New York State Legislative Law; or (7) a subsidiary or affiliate of such a public authority.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

Signature: \_\_\_\_\_

**State Finance Law Affirmation**  
NEW YORK STATE FINANCE LAW § 139-j AND § 139-k

**The proposer hereby affirms that:**

1. The proposer understands and agrees to comply with the procedures of Westchester County Health Care Corporation, as operator of Westchester Medical Center, relating to restricted communications during the procurement process as required by New York State Finance Law §§ 139-j(3) and 139(j)(6)(b); and
2. All information provided to WMC by proposer in response to this RFP, including but not limited to information concerning compliance with New York State Finance Law § 139-j and § 139-k, is complete, true, and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Proposer Name: \_\_\_\_\_

Proposer Address: \_\_\_\_\_

\_\_\_\_\_

## M/WBE and EEO Compliance Documentation Forms

Name of Proposer: \_\_\_\_\_

RFP #: \_\_\_\_\_

### A. MINORITY/WOMEN'S BUSINESS QUESTIONS

As part of the WMC program to encourage the participation of minority/women's business, we request that you answer the questions listed below. If you do not respond, we will assume that you do not wish to be considered as a minority/women's business.

A minority business enterprise is defined as a business of which 51% or more is owned by minorities or, in the case of a publicly owned business, 51% or more of the voting power in shares of the corporation is owned by minorities. Minorities are defined as Blacks, Hispanics, Asians, American Indians, Eskimos and Aleuts.

A women owned business enterprise is defined as a business in which women own at least 51% of the firm, or in the case of a publicly owned business, at least 51% of the stock is owned by citizens or permanent resident aliens who are women.

#### QUESTIONS:

1. Are you a minority owned business: Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what is your minority group(s)?

Answer: \_\_\_\_\_

2. Are you a women owned business: Yes \_\_\_\_\_ No \_\_\_\_\_

3. If you answered yes to numbers 1 or 2, what percentage of ownership or voting authority of your business is held by members of a minority group or women?

Answer: \_\_\_\_\_

4. Please identify by name, the minority or women owners of your business and ownership percentage of each.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_