



New York Department of Health fiscal intermediary application process takes shape

By Philip Rosenberg and Caitlin A. Donovan

The New York State Department of Health (DOH) recently released additional information concerning the Request for Offers (RFO# 20039), which seeks New York State Fiscal Intermediary (FI) applicants for the Consumer Directed Personal Assistance Program (CDPAP). The deadline to apply has now been extended to **March 3, 2020**. The RFO and its amendments are available on the [DOH website](#), which also includes a revised fillable application (revised as of January 31, 2020). A complete application is comprised of two (2) separate parts: (i) the Administrative Offer and (ii) the Technical Offer, which must be separately labeled when submitted. The components of the Administrative and Technical Offer are as follows:

For the Administrative Offer		
RFP §	Submission	Included
§ 6.1.A	Attachment 1 – Bidder’s Disclosure of Prior Non-Responsibility Determinations (completed and signed)	<input type="checkbox"/>
§ 6.1.B	Freedom of Information Law – Offer Redactions (if applicable)	<input type="checkbox"/>
§ 6.1.C	Attachment 3 – Vendor Responsibility Attestation	<input type="checkbox"/>
§ 6.1.D	Attachment 4 – Vendor Assurance of No Conflict of Interest or Detrimental Effect	<input type="checkbox"/>
§ 6.1.E	Attachment 6 – Encouraging Use of New York Businesses	<input type="checkbox"/>
§ 6.1.F	Attachment 7 – Offeror’s Certified Statements	<input type="checkbox"/>
§ 6.1.G	Attachment 11 – Executive Order 177 Prohibiting Contracts with Entities that Support Discrimination	<input type="checkbox"/>

For the Technical Offer		
RFO §	Submission	Included
§ 6.2.A	Title Page	<input type="checkbox"/>
§ 6.2.B	Table of Contents	<input type="checkbox"/>
§ 6.2.C	Attachment B – Offeror’s Demonstration of Eligibility to Submit an Offer (Requirement)	<input type="checkbox"/>
	Attachment C – Collaborating Partner Demonstration of Eligibility to Otherwise Submit an Offer (if applicable)	<input type="checkbox"/>

For the Technical Offer		
RFO §	Submission	Included
§ 6.2.D	Attachment D – Documentation of Lead FI Service Area	<input type="checkbox"/>
	Attachment E – Description of Services to be Provided by Subcontractors (if applicable)	<input type="checkbox"/>
§ 6.2.E	Attachment F – Program Specific Certifications and Attestations	<input type="checkbox"/>
§ 6.2.F	Technical Offer Narrative	<input type="checkbox"/>

According to the RFO, DOH will make awards based on the following criteria:

- Ability to appropriately serve individuals participating in the program
- Geographic distribution that would ensure access in rural and underserved areas
- Demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce
- Ability to provide timely consumer assistance (including experience serving individuals with disabilities, the availability of consumer peer support)
- Demonstrated compliance with all applicable federal and state laws and regulation, including but not limited to those relating to wages and labor

The initial announcement of the RFO left many unanswered questions, which the recently released response to written questions purports to answer. Many of the answers, however, refer to the RFO itself and offer little additional insight on how DOH will evaluate submissions to the RFO. Indeed, in its recently-released responses, DOH stated that its specific evaluation criteria and methodologies would not be publicly available until after the RFO awards are made. That, of course, makes it challenging for applicants to submit competitive submissions (since the evaluation methodology is not known). What is clear, though, is that any entity currently operating as an FI must submit an application to continue providing services. Those FIs that do not submit a timely application will need to cease operations and transition its services to a DOH-approved FI prior to the award of any contracts. Any FIs who are not selected under the RFO will receive at least forty-five (45) days’ advance notice of their non-selection for the CDPAP program to permit the transfer of their clients.

The response to written questions also fails to demarcate the responsibilities of the “Lead FI” and “collaborating partner” roles. While the RFO specifically carves out functions that a collaborating partner cannot perform and which are reserved for a Lead FI only, the RFO does not provide guidance on the functions to be performed by collaborating partners. Despite requests, the DOH response to written questions does not define any specific tasks instead explaining that “[u]ltimately, the services provided by collaborating partners and subcontractors are to be determined by the Lead FI/prime contractor, in negotiation” but that “[s]uch collaborations may be formed to best meet the needs of consumers, provide operational efficiencies, provide geographic distribution that would ensure access in rural and underserved areas, and provide cultural and language competencies specific to the consumers it will serve and those of the available workforce.”

In addition to introducing new terms such as “Lead FI” and “collaborating partner,” the RFO requires all FI applicants to accept and acknowledge their role as FI is that of a joint employer with the CDPAP

consumer of the personal assistant (PA). Further, the RFO states that FIs must comply with wage parity rules (N.Y. Pub. Health Law § 3614-c).

According to the RFO, interested entities may participate in multiple applications: as a Lead FI and as collaborating partners. While an applicant can only submit one Lead FI application, there is no limit to the number of offers that an eligible entity may join as a collaborating partner, and an applicant can be awarded contracts both as a lead FI and as a collaborating partner.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Philip Rosenberg, 518-427-2709, prosenberg@nixonpeabody.com
- Caitlin A. Donovan, 518-427-2737, cdonovan@nixonpeabody.com