



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

REQUEST FOR PROPOSALS

**Operation and Maintenance of Copper-Silver Water
Disinfection Systems**

RFP #: CMC-14844

RFP Issue Date: January 21, 2020

Proposal Due Date: February 27, 2020

**WESTCHESTER MEDICAL CENTER
FACILITIES 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 – Definitions
- 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” or the “Corporation”) is issuing this Request for Proposals (“RFP”) to invite interested vendors to submit proposals for Operation and Maintenance of Copper-Silver Water Disinfection Systems.

1.2 Background

Located in Valhalla, New York, Westchester Medical Center is the Hudson Valley region's advanced medical care and referral hospital, serving more than 3.5 million people. Each year, more than 120,000 patients receive care at Westchester Medical Center in every clinical specialty through our main hospital, our Maria Fareri Children's Hospital – the only all-specialty children's hospital in the region - and our Behavioral Health Center. In roughly one year the Medical Center has grown from a single quaternary campus to a seven hospital system formed by the acquisition of Mid-Hudson Hospital, and Bon Secours Charity Hospitals. Westchester Medical Center's services are also accessible to residents of New York City and portions of Fairfield County, Connecticut.

Spanning every adult and pediatric medical specialty Westchester Medical Center (WMC), the 895-bed regional medical system serving New York’s Hudson Valley region and beyond, encompassing a regional academic medical center, children’s hospital, community hospital, two inpatient behavioral health centers, homecare and numerous outpatient health and related services serves as a lifeline to the more than 3.5 million people in the Hudson Valley region and beyond. With a total workforce of 7,000 healthcare professionals including 1,200 physicians, Westchester Medical Center is one of the region’s largest sources of employment and economic impact. From prevention to education and treatment, the physicians, health care staff and volunteers at Westchester Medical Center and our MidHudson Regional Hospital have a reputation as the region’s most advanced and innovative health care delivery system.

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 Contacts for this RFP are:

Michael Praskievicz
Director, Facilities, Engineering &
Maintenance
Westchester Medical Center
100 Woods Road
Valhalla, NY 10595
914-493-7912
Michael.Praskievicz@wmchealth.org

Robert Daly
Director, Facilities, Engineering &
Maintenance
Westchester Medical Center
100 Woods Road
Valhalla, NY 10595
914-493-3725
Robert.Daly@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 perform the services 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

Event	Date
RFP Release	1/21/2020
Vendor Presentations	TBD
Questions and Requests for Clarification Due	2/21/2020

Proposal Due Date	2/27/2020
Anticipated Notice of Tentative Award	3/16/2020
Anticipated Contract Start Date	4/1/2020

2. RFP Instructions

2.1 RFP Questions and Clarifications

All questions or requests for clarification concerning the RFP shall be submitted in writing or via e-mail or by telephone to the Designated Contact(s) by **3:00 PM, Friday February 21, 2020**. Site visits can be coordinated with designated contacts.

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 distribute it to all known prospective proposers.

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. Proposers are requested to structure their proposal using the following information:

- A. Annual pricing for service and maintenance described below.
 - Periodic copper analysis as recommended by proposer to ensure system efficacy.
 - Periodic silver ion analysis as recommended by proposer to ensure system efficacy.
 - Quarterly legionella sampling at 36 distal sites.
 - Flow cell cleaning, calibration and maintenance.
- B. Onetime up-front price for spare cells as proposer recommends.
- C. All proposals must include completed copies of the forms annexed hereto as **Attachments D, E, and F**.

2.5 Submission of Proposal

Proposers must submit their proposal no later than **3:00 PM** Eastern Standard Time on **FEBRUARY 27, 2020** to the address stated below. 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.

All proposals shall be enclosed in sealed envelopes or boxes bearing labels that clearly state: (i) the name of the proposer; (ii) the proposer's address; and (iii) the title of the RFP. Proposals may be delivered by hand, by U.S. mail, or by express mail via a nationally-known overnight service.

Proposals must be submitted to:

**Westchester Medical Center
Attn.: Facilities Department
100 Woods Road
Valhalla, New York 10595**

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.

All proposals received in accordance with Section 2.5 will be reviewed and evaluated. Incomplete proposals and proposals that do not meet the minimum requirements will be rejected. After initial round of presentations, requestors will be provided a uniform and final definitive scope of work and a request for Best and Final offers for final selection.

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 any or all of the services 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 services 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 and MWBE 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 of 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 services 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

The ability to perform the requested services is most important in the evaluation proposals. In addition, proposals will be evaluated for: existing or potential conflicts of interests, financial and operational stability, as well as 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.

Proposals will be evaluated based on technical (25%) and financial (75%) factors. After initial round of presentations, requestors will be provided a uniform and final definitive scope of work and a request for Best and Final offers for final selection.

4.2 Notification of Award

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

5. Scope of Work

Westchester Medical Center has three installed Copper Silver ionization water systems to serve the domestic hot water in the Macy Pavilion, the University Hospital and the Maria Fareri Children’s Hospital buildings.

Customer equipment:

<u>Macy Building:</u>	One Liquitech LCU3 controller One QF14 4/4 flow cell
<u>University Hospital:</u>	Two LCU10 controllers Three QF 4 14 flow cells
<u>Maria Fareri:</u>	One LCU5 controller Two QF14 4/4 flow cells

Piping arrangements are depicted in figures 1 through 3 in Attachment A.

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 WMC's Travel and Expense Policy for Vendors as set forth in **Attachment C**, 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 **five (5) years** commencing on or about **April 1, 2020**.

6.3 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.

6.4 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.

Figures 1, 2, and 3

Figure 1 System installed at Maria Fareri Children's Hospital



Figure 2 System installed at University Hospital



Figure 3 System installed at Macy Pavilion



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 develop and implement the operation and maintenance of copper-silver water disinfection systems sought by this RFP.
- 1.2. Services. "Services" shall mean the operation and maintenance of copper-silver water disinfection systems as may be offered by Vendor to WMC as part of a proposal submitted in response to this RFP.
- 1.3. Vendor Representative. "Vendor Representative" shall mean all employees, Vendors, agents, subcontractors or representatives of Vendor providing Services on behalf of Vendor at any WMC site.

ARTICLE II SERVICES AND PAYMENT

- 2.1. Services. All 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 WMC 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.
- 2.2. Conduct. All Vendor Representatives shall, at all times while present at the WMC campus, comply with WMC rules and regulations and the lawful directives of WMC security personnel and WMC administration. Vendor Representatives shall, at all times while present at the WMC campus, conduct themselves in accordance with WMC Policies and Procedures, including the WMC Code of Conduct, Sexual Harassment Policy, and Anti-Discrimination Policy. The Vendor shall promptly remove from the WMC campus any Vendor Representative whose conduct the WMC reasonably determines to be objectionable.
- 2.3. Ownership of Records. All records compiled by Vendor in providing and completing the Services, including but not limited to written reports, studies, computer protocols, graphs, charts and all other similar recorded data, shall become and remain the property of the WMC. Vendor may retain copies for its own use, all of which shall be subject to all confidentiality requirements set forth herein.
- 2.4. Payment Terms. WMC shall pay all properly submitted and undisputed invoices for the Services 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.
- 2.5. 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 Customer pursuant to this Agreement via Customer's electronic payment program (the "ePayables Program") without any additional fees or restrictions. The ePayables Program is a streamlined, paperless payment process for Customer's vendors and suppliers operated by financial and/or e-commerce partners engaged by Customer.
- 2.6. 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.
- 2.7. 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 III
TERM AND TERMINATION**

- 3.1. 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.
- 3.2. 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.
- 3.3. 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 sixty (60) days prior written notice.
- 3.4. 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.
- 3.5. 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.
- 3.6. 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 Services 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 Services exceed a period of one hundred and twenty (120) days from Vendor's receipt of WMC's notice.

**ARTICLE IV
GENERAL PROVISIONS**

- 4.1. Confidentiality. For purposes of this Section 4.1 "Confidential Information" shall mean any and all proprietary information, customer lists, patient information, customer purchasing requirements, prices, 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.
- 4.1.1. In performing their respective obligations under the Agreement, the Vendor and WMC 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 the Agreement, the Vendor and WMC 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 WMC shall only make the Confidential Information of the other Party available to its employees, auditors, attorneys or other professionals or Vendors hired by such Party in the ordinary course, 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.
- 4.1.2. 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 4.1.2 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.

- 4.1.3. 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.
- 4.2. 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.
- 4.3. 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 Services that are the subject of the Agreement.
- 4.4. 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.
- 4.5. 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."
- 4.6. 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 Services purchased under the Agreement. Where a discount or other reduction in price of the Services 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.
- 4.7. 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.
- 4.8. 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).
- 4.9. 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 Services 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.

- 4.10. 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 Services 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.
- 4.11. 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 Services 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.
- 4.12. 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.
- 4.13. 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.
- 4.14. 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.
- 4.15. 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.

- 4.16. Insurance. The Vendor will maintain general public liability insurance against any insurable claims as set forth in Schedule B-1 attached hereto.
- 4.17. Indemnity.
- 4.17.1. 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.
- 4.17.2. Notice. It is a condition to each Party's obligations under this Section 4.17 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.
- 4.17.3. 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.
- 4.18. 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.
- 4.19. Background Check. Vendor further agrees that all Vendor Representatives assigned to WMC hereunder will be subject to a background check substantially similar to the inquiries made by the WMC with respect to its own employees and that the WMC has the right to deny any Vendor Representative access to its facilities based on the results of such inquiry.
- 4.20. 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.
- 4.20.1. 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.
- 4.21. Survival. All provisions regarding confidentiality, indemnification, warranty, liability and limits on liability shall survive termination of the Agreement.
- 4.22. 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

- 4.23. 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.
- 4.24. Amendment. The Agreement may only be amended by written agreement of the Parties.
- 4.25. 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.
- 4.26. 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.
- 4.27. 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.
- 4.28. 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.
- 4.29. 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.

SCHEDULE B-1
INSURANCE REQUIREMENTS

1. Prior to providing the Services hereunder, the Vendor shall obtain at its own cost and expense the insurance required herein from a licensed insurance company, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the Corporation, which evidence shall be subject to Corporation's approval. The policies or certificates thereof shall provide that Corporation shall receive thirty (30) days' written notice prior to cancellation of or material change in the policy, which notice shall name Vendor, identify this Agreement, and be sent via registered mail, return receipt requested. Failure of the Vendor to obtain and maintain any insurance required hereunder shall not relieve the Vendor from any of its obligations hereunder, including but not limited to indemnification, or from any Vendor liability hereunder. All property losses shall be made payable to, and adjusted with, the Corporation. If claims for which Vendor may be liable are filed against either Party, and if such claims exceed the coverage amounts required herein, Corporation may withhold such excess amount from payment due to Vendor until the Vendor furnishes additional security covering such claims in a form satisfactory to the Corporation.
2. The Vendor shall provide proof of the following coverage:
 - (a) Workers' Compensation. Vendor shall provide to Corporation a certificate form C-105.2 or State Fund Insurance Company form U-26.3 as proof of compliance with the New York State Workers' Compensation Law, and State Workers' Compensation Board form DB-120.1 as proof of compliance with the New York State Disability Benefits Law, provided, however, that if Vendor is self-insured for Worker's Compensation and/or Disability coverage, a New York State Workers' Compensation Board certificate evidencing such fact. Location of operation shall be "All locations in Westchester County, New York."
 - (b) Employer's liability insurance with a minimum limit of \$100,000.
 - (c) General liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.1), naming the Westchester Medical Center as an additional insured. This insurance shall indicate the following coverage on the certificate of insurance:
 - (i) Premises - Operations.
 - (ii) Broad Form Contractual.
 - (iii) Independent Contractor and Sub-Contractor.
 - (iv) Products and Completed Operations.
 - (d) Professional liability insurance ("acts and omissions") on an occurrence basis covering the Vendor and its employees and agents, with minimum limits of \$1,300,000 per occurrence, \$3,900,000 in the aggregate.
 - (e) Vehicle liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000. This insurance shall include the following coverage for bodily injury and property damage arising out of the use of owned, hired and non-owned vehicles.
3. All policies and certificates of insurance required herein shall provide that:
 - (a) The insurer, or Vendor if it is self-insured, shall have no right to recovery or subrogation against the Corporation (including its employees and agents), it being the intention of the Parties that the insurance policies shall protect both Parties and be primary coverage for any and all losses covered by the insurance.
 - (b) The insurer, or Vendor if it is self-insured, shall have no recourse against the Corporation (including its employees or agents) for payment of any premiums or for assessments under the policy.
 - (c) Vendor assumes responsibility, and is solely at risk for, any and all deductibles.
 - (d) The clause "other insurance provisions" shall not apply to the Corporation.

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 Medical Center, 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 Entity¹ 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:

¹ "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 Medical Center, 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's 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.
