



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

RFP NO. 15-1400

All Payer Health Care Claims Database (APCD)

Lead Organization & Data Vendor Services

CLARIFICATION ADDENDUM

December 16, 2015

OFM has been informed about concerns and questions regarding the RFP and associated draft contract terms and conditions. OFM has also learned that there is misinformation and are incorrect interpretations related to the RFP and contract terms and conditions.

The purpose of this Addendum is to provide information regarding the WA-APCD to address the concerns and questions, and to correct any misunderstandings.

Question: There is widespread concern about whether the business model in statute (requiring the APCD to be self-sustaining) is achievable. Why does the RFP require the Lead Organization to develop a financial sustainability plan?

Answer: OFM agrees that the business model may not be a viable model. However, the current law requires that the Lead Organization is responsible for developing a plan for the financial sustainability of the database as self-sustaining.

Question: Does that mean that the WA-APCD law requires that the successful bidder guarantee ongoing performance without pay?

Answer: No, the law does not require that the bidder guarantee performance without payment. RCW 43.371.020(5) only requires that the Lead Organization is responsible for, among other things, funding of the database. RCW 43.371.020(5)(g) requires the Lead Organization to work with the Data Vendor to develop a plan for the financial sustainability of the database that is self-sustaining.

Question: Do Bidders have to accept the contract terms and conditions that were included in the RFP?

Answer: No, bidders do not have to accept the contract terms and conditions included with the RFP. Although bidders must indicate a willingness to enter into a contract substantially the same as the Contract in Exhibit B, per section 1.5 of the RFP, bidders are permitted to propose additional or alternate contract terms. In fact, bidders are invited to identify the problematic language in the Sample Contract and propose language or contract modifications.

Question: Does the Apparently Successful Bidder have the opportunity to negotiate alternate or additional terms and conditions to the contract?

Answer: Yes. Once an Apparently Successful Bidder is identified, the parties will begin to negotiate the final terms and conditions. It is during this negotiation that the parties will address the issues raised in the Apparently Successful Bidder's response, and any other issues or concerns that have arisen after the bids are submitted.

Question: If the Lead Organization plans to use or incorporate pre-existing assets to do the work or develop the work product, will it have to turn over control and ownership of those assets to the state?

Answer: No. Ownership will stay with the Lead Organization on all assets controlled or owned by the Lead Organization prior to entering into a contract with OFM. This subject is specifically covered in the APCD draft Contract Section 11 titled Ownership/Rights in Data.

Question: But doesn't the contract require the Lead Organization to provide OFM with a royalty-free irrevocable license to the Lead Organization's preexisting work?

Answer: Yes. However, paragraph 11.5 protects the Lead Organization's ownership of its pre-existing materials. Nothing in the contract would prevent the Lead Organization from owning and using its pre-existing material. The contract provides for an irrevocable license to be granted to OFM. This provision protects the state in the event that pre-existing material is incorporated into the work product delivered under the contract, a license is conferred to the state through OFM so that the work product can remain in productive use.

Question: Does OFM *only* own the work product developed and delivered under the contract?

Answer: Yes. OFM will only own the work product specifically produced pursuant to the contract. If the Lead Organization owns pre-existing materials and provides them as part of the solution, the Lead Organization would continue to own those materials and would grant OFM a license to use them.

Question: Can the Lead Organization access the WA-APCD data to produce and sell data extracts, reports, and analyses?

Answer: Yes. Chapter 43.371 RCW allows the Lead Organization to produce certain reports. Furthermore, draft contract Section 12.2 allows the Lead Organization to receive data extracts when in compliance with Chapter 43.371 RCW and OFM rule, and with a signed non-disclosure agreement. This section does not prohibit the Lead Organization from performing analyses on these extracts.

Question: Why is the time period for implementing the WA-APCD only 10 months? Isn't that unreasonable?

Answer: OFM is also concerned about the timeframe and alerted the Centers for Medicare and Medicaid Services (CMS) to this concern in August 2015. However, the aggressive timeline for implementation is due to the federal grant requirements. Currently, the grant period for both Cycle III and Cycle IV grants runs until September 30, 2016. OFM cannot enter into a contract that guarantees payment beyond this timeframe

Question: Do the RFP and contract indicate a preference by OFM toward building something brand new for the WA-APCD solution rather than build upon existing infrastructure?

Answer: No, OFM does not have a preference toward building something new rather than building upon existing infrastructure. Leveraging existing infrastructure may be a perfectly acceptable solution for the WA-APCD. Either would be evaluated as a viable proposed solution, with neither getting preferential treatment.

Question: How does OFM intend to approach operational oversight of the WA-APCD Lead Organization?

Answer: OFM views this endeavor as a partnership within legal requirements. However, OFM operational oversight needs to be consistent with state law. In addition to complying with state law, OFM will perform its duties as a contract administrator over the statements of work and contract, consistent with the terms and conditions that are ultimately negotiated between OFM and the Lead Organization.

Question: Why does the Lead Organization need to adopt bylaws that ensure it is not controlled or influenced by any person or entity that makes up or receives payments for health care services based on WA-APCD's health care cost analyses?

Answer: The state funding source currently has this requirement for a Lead Organization. OFM copied the language directly from the federal grant Funding Opportunity Announcement (FOA) Appendix F, Conflict of Interest Requirements, and placed it into the contract as 21.9 (a) and (b). This FOA was attached as Appendix D to the RFP so bidders could read the requirement in context themselves. Additionally, our Centers for

Medicare and Medicaid Services (CMS) program manager reiterated to OFM via email last spring that this was of primary importance to them when establishing an APCD Data Center.

Question: Does the WA-APCD law require payer and provider entities be on the Lead Organization's governance structure and advisory committees?

Answer: No. The law requires representation from payer and provider entities on the *Advisory Committees* for the Lead Organization, but does not require representation from payer and provider entities on the Lead Organization's governance structure for the database, except for the third-party administrator of the uniform medical plan. (Chapter 43.371.020 (5)(h), Chapter 43.371.020 (6)).