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## Working with Integrity Monitors

### Practical Contracting Tips and Red Flags

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On July 17, 2020, Governor Murphy signed Executive Order 166 ("EO 166"), which established the COVID-19 Compliance and Oversight Task Force (the "Taskforce") and the Governor's Disaster Recovery Office ("GDRO"). Pursuant to EO 166, the Taskforce has issued guidelines ("IM Guidelines") regarding the appointment and responsibilities of COVID-19 Integrity Oversight Monitors ("Integrity Monitors"). Integrity Monitors are intended to serve as an important part of the State's accountability infrastructure while working with Recovery Program Participants to develop measures to prevent, detect, and remediate fraud, waste or abuse in the expenditure of COVID-19 Recovery Funds.

To that end, a pool of Integrity Monitors has been created using State Contract G4018. The IM Guidelines establish that there will be three categories of Integrity Monitors. The first and second categories are available for use by Recovery Program Participants who need proactive assistance with financial auditing (Category 1) or grants management (Category 2). Recovery Program Participants should consult with GDRO as to whether a Category 1 or 2 Integrity Monitor should be procured. Category 3 Integrity Monitors should be retained for integrity monitoring/anti-fraud services by all Recovery Program Participants that have received \$20 million or more in COVID-19 Recovery Funding. Category 3 Integrity Monitors may also be used by Recovery Program Participants that have received less than \$20 million, on an as-needed basis.

### BEFORE YOU BEGIN

Recovery Program Participants should consider the following initial questions:

- ✓ What type of Integrity Monitor is needed: Category 1, 2, or 3? Keep in mind that the IM Guidelines state that Recovery Program Participants who have received over \$20 million should retain a Category 3 Integrity Monitor.
- ✓ How will the Integrity Monitor's contract be funded? Is an Integrity Monitor contract a permissible use of that funding?
- ✓ Are there any deadlines for that source of funding? Will the Integrity Monitor be able to complete its engagement prior to that deadline?

- ✓ Which programs, projects, or funding streams will the Integrity Monitor be tasked with reviewing? Be specific.
- ✓ What deliverables, documents, or reports will the Integrity Monitor be expected to produce?
- ✓ Will the Integrity Monitor be reviewing prior expenditures, ongoing expenditures, or both? What will be the term for the contract?
- ✓ Who will be the primary point of contact for the Integrity Monitor? Which program staff will assist the point of contact in providing the required information or documents to the Integrity Monitor?

## PREPARING THE ENGAGEMENT QUERY

Once a Recovery Program Participant has answered the above questions and consulted with GDRO, the next step is to contact the State Contract Manager to begin the process of developing an Engagement Query for an Integrity Monitor. The State Contract Manager serves as the liaison between the Recovery Program Participant and the prospective Integrity Monitors throughout the procurement process. The Method of Operation for State Contract G4018 requires Recovery Program Participants seeking to procure an Integrity Monitor to conduct a mini-bid process by issuing an Engagement Query to all firms under G4018.

A form template is available from the State Contract Manager for the Engagement Query. The template identifies general information required in each Engagement Query; however, the Recovery Program Participant is responsible for developing a scope of work that is relevant to the category of Integrity Monitor desired and reflects the COVID-19 Recovery Program(s) that will be monitored or reviewed.

### *Background*

The Recovery Program Participant should modify the Background section of this template as needed to describe:

- ✓ Any relevant background or context regarding the Recovery Program Participant's role in responding to the pandemic or regarding its use of COVID-19 Recovery Funds;
- ✓ Background on the sources and amounts of federal funding received by the Recovery Program Participant, including any relevant citations to applicable law or guidance (e.g. Coronavirus Relief Fund, FEMA, Consolidated Appropriations Act, American Rescue Plan Act, etc. or other applicable law or guidance). If multiple sources or programs are under review, Recovery Program Participants may want to provide breakdowns in an Excel spreadsheet attachment; and
- ✓ Descriptions of any programs developed or administered by the Recovery Program Participant and/or descriptions of how the relevant funding was used (e.g. salaries,

personal protective equipment, health benefits, assistance programs, etc.), including any program guidelines developed by the Recovery Program Participant.

If the Recovery Program Participant has identified that a particular program, expenditure, or funding source is more susceptible to fraud, improper payments, or non-compliance, the Recovery Program Participant can identify those risk factors in this section. This will provide bidders context for the review to be performed. For example, the Recovery Program Participant may identify a program as higher risk if the program has had prior issues or audit findings, the program relies heavily on subrecipients or third-party contractors, or the program relies on self-certifications by applicants.

### ***Scope of Work***

Recovery Program Participants should make sure the Scope of Work adequately describes the work expected of the Integrity Monitor. The tasks described in this section will vary based on the type of Integrity Monitor engaged. Recovery Program Participants should not include all of the potential tasks listed in the IM guidelines verbatim, as they may not be relevant in all circumstances and may be too general, as written. The scope of work must be detailed enough to allow potential bidders to fully understand how much work and how many hours will be required to complete the engagement, and then respond to the solicitation with a firm, fixed offer. An incomplete or vague scope of work could result in inflated or inaccurate pricing.

*For Integrity Monitors from Category 3, the Engagement Query should include the following key components:*

**Programs or categories of expenditures to be reviewed:** The Engagement Query should be clear as to which programs, projects, or categories of expenditures require review and/or monitoring. In general, programs over \$20 million should be reviewed. If the Recovery Program Participant seeks to have the Integrity Monitor select programs for review based on the results of a risk assessment conducted by the Integrity Monitor, the Engagement Query should state that. Recovery Program Participants should avoid requesting integrity monitoring services for future, unspecified programs, as it will be difficult for potential bidders to accurately gauge the amount of work required for such programs to develop appropriate pricing.

**Type of review:** The Engagement Query should also be clear as to the type of review to be performed by the Integrity Monitor (e.g. program oversight, construction project monitoring, procurement review, a risk assessment only, a detailed file/documentation review, on-site monitoring, fraud detection and analytics, etc.). The type of review will depend upon the unique characteristics of the program or expenditure and the level of potential risk, among other factors.

Recovery Program Participants should consult with GDRO as to both the programs/expenditures to be reviewed, the scope or length of the review, and the type of review to be performed.

## EXAMPLES OF INTEGRITY MONITOR REVIEWS

- ✓ Program reviews: a review of a sample of applicant files for eligibility, payment, and proper documentation; a review of program policies and procedures, organizational structure/capacity, and internal controls assessment; a review of program risks.
- ✓ Fraud prevention/detection and data analytics: a review of program or applicant data and/or contracts to identify potential fraud, using data analytics or other methods to identify anomalies, patterns, and discrepancies; conducting interviews or other follow-up as necessary; and cross-checking or validating information against other data sources; providing training to staff on fraud detection methods or red flags; assisting in the development of an anti-fraud monitoring, prevention, and detection program.
- ✓ Construction project monitoring: ongoing monitoring, including a review of procurements, expenditures, change orders, invoices, punch list items, Buy America, prevailing wage and Davis-Bacon Act compliance, Minority/Women-owned Business Enterprises compliance, on-site reviews, etc.
- ✓ Procurement/expenditure reviews: a review of procurements to determine compliance with applicable procurement regulations; a review of expenditures to test for proper documentation, authorization, and approvals.
- ✓ Payroll reviews: a review of payroll expenditures, time sheets, job descriptions and fringe benefits to ensure proper documentation, eligibility for reimbursement, etc.
- ✓ Developing risk assessments or compliance plans: a review of organizational structure, internal controls, program guidelines, prior audits, and policies and procedures in order to develop a risk assessment and make recommendations for improvements; a review of relevant federal guidance and internal operations and procedures to develop compliance plan.

**Sampling methodology:** In general, if program or applicant file reviews, fraud detection, or investigations are part of the Integrity Monitor's engagement, the Integrity Monitor will be responsible for selecting an appropriate sample of files according to applicable standards. Recovery Program Participants, however, can provide direction to Integrity Monitors as to:

- a minimum percentage of files to review,
- whether the review should take place on-site or virtually,
- relevant federal guidance regarding sampling, and/or
- certain characteristics to consider in making sampling selections (e.g. geographic location, population, amount of funding, etc.).

**Documentation of findings:** The Engagement Query should make clear that if the Integrity Monitor finds an improper payment, questioned cost, or fraud, the Integrity Monitor will be expected to provide sufficient documentation to the Recovery Program Participant for the Recovery Program

Participant to be able to review and potentially recoup the payment. For example, the Engagement Query might state that if improper payments are found or questioned costs are identified, the Integrity Monitor must provide the Recovery Program Participant with their workpapers or a detailed report that identifies the potential improper payment, documentation reviewed, and brief rationale for the finding.

**Risk assessments:** If a risk assessment is part of the engagement, Recovery Program Participants should clarify whether the Integrity Monitor should assess risk in the organization as a whole, for a particular program(s), or both. The Engagement Query should include information regarding whether risk assessment updates are required (if so, on what intervals) and whether Integrity Monitors are expected to provide recommendations for reducing or mitigating any identified risks.

*For Integrity Monitors from Category 1 or 2, the Engagement Query should clearly address the scope of work to be performed. This might include:*

- ✓ Analyzing, identifying, and documenting potential risks in a particular program or organization-wide
- ✓ Developing or improving policies or procedures and/or assisting in the implementation of policies and procedures
- ✓ Consulting services, including providing subject matter expertise or reviewing legal or guidance documents
- ✓ Developing compliance plans and/or policies to ensure compliance with Uniform Guidance 2 CFR Part 200 and other applicable guidance
- ✓ Developing training materials for staff and conducting such trainings or train-the-trainer sessions
- ✓ Creating grant management tools to be used by staff
- ✓ Reviewing or assisting in the development of program applications or guidelines, developing document management systems, or supporting the administration of funding
- ✓ Advising regarding remedial steps or corrective actions to be taken to address prior audit or Integrity Monitor findings and assisting Recovery Program Participants in setting up systems or procedures accordingly

### ***Specific Performance Milestones/Timelines/Standards/Deliverables***

This section of the Engagement Query should state, at a minimum, the date upon which all deliverables will be due. This date will be considered the end of the contract term. Recovery Program Participants, however, may also want to include additional milestones or deliverables in this section, for example, the date certain tasks or reviews should be completed, the dates for specific updates or progress reports to be delivered, etc. Recovery Program Participants may also

include a requirement to attend a kickoff meeting and/or other meetings on a regular interval (e.g. weekly, biweekly).

#### **DETERMINING THE CONTRACT TERM**

When determining the term of the Integrity Monitor engagement, Recovery Program Participants should consider the duration of the program(s) or project(s) under review, the type of review, and any risk factors involved. Recovery Program Participants should also consult with GDRO to determine the appropriate contract term.

- ✓ Long-term or ongoing programs/projects: If a program or project is ongoing, consider whether the Integrity Monitor should provide ongoing monitoring until the program or project is complete. Ongoing monitoring could involve quarterly sampling/reviews, annual reports, fraud detection, or periodic risk assessments. For a long-term Integrity Monitor engagement, Recovery Program Participants may consider building in a sliding scale approach, wherein the amount or level of work is dependent on the level of risk or completion status of the project. This type of approach may be particularly relevant for Integrity Monitors monitoring construction or infrastructure projects.
- ✓ Short-term reviews (i.e. a few weeks or months): Consider whether the term provides adequate time for the Integrity Monitor to properly complete the engagement. In an abbreviated timeframe, Recovery Program Participants will have to ensure that they have sufficient time to prepare and deliver documentation to the Integrity Monitor and answer necessary questions, while still providing the Recovery Program Participant with sufficient time to complete the engagement.

#### ***Reporting Requirements***

According to EO 166 and the IM Guidelines, Integrity Monitors are required to produce quarterly reports, using the applicable reporting template. Integrity Monitors are also required to produce any reports requested by the Office of the State Comptroller (OSC). Recovery Program Participants should determine whether any other reports or written work product would be useful. The quarterly report templates are intended to provide a broad overview of the work performed and any issues identified. For Category 3 Integrity Monitors, Recovery Program Participants may want to request a more detailed report to address any specific findings. For Integrity Monitors from Category 1 or 2, Recovery Program Participants may want to request more frequent progress reports or updates.

#### ***Liquidated Damages***

Recovery Program Participants must develop liquidated damages clauses that address what will occur if the Integrity Monitor fails to deliver quarterly reports or meet other benchmarks identified

by the Recovery Program Participant. Recovery Program Participants must get approval of these liquidated damages clauses from the Attorney General's office.

## OSC REVIEW AND APPROVAL

Once the Recovery Program Participant has finalized the draft Engagement Query, pursuant to EO 166, the State Contract Manager will submit the proposed Engagement Query to OSC. Recovery Program Participants should submit these to OSC with at least ten business days' notice. OSC will review the Engagement Query to determine if it complies with the IM Guidelines and applicable procurement laws and regulations. OSC may make comments or recommendations for changes where necessary. After receiving OSC approval, the State Contract Manager will distribute the final approved Engagement Query to prospective bidders.

## QUESTION AND ANSWER PERIOD

Recovery Program Participants are responsible for answering any questions posed during the question and answer period (Q & A Period) of the mini-bid process. The Q & A Period may provide clues as to parts of the Engagement Query that lack clarity. Recovery Program Participants should provide as much detail in their answers as possible, as this will make for better informed bids. Any modifications bidders may want to request to the contract should be addressed in the Q & A Period, not in their proposals.

## EVALUATION AND NOTIFICATION OF AWARD

Once bidders' proposals are received, they will be evaluated by staff of the Recovery Program Participant based upon pre-determined criteria in the Engagement Query. The State Contract Manager will award the contract based upon the Recovery Program Participant's recommendations. The State Contract Manager will be responsible for notifying the selected bidder of the award.

### RED FLAGS IN THE EVALUATION PROCESS

- ✓ Beware of exceptions, modifications, and other requests for changes that may make a bid non-responsive. A non-responsive bid is one that materially deviates from the required terms in the Engagement Query. This includes requesting modifications to State standard terms and conditions or modifications to liquidated damages clauses, such as capping the liquidated damages. Other material deviations might include responding with proposed timelines or deliverables that differ from what has been specified in the Engagement Query. Contact the State Contract Manager for assistance in determining whether a bidder's proposal is responsive. Any non-responsive bids must be disqualified.

### RED FLAGS IN THE EVALUATION PROCESS (cont.)

- ✓ Be on the lookout for price proposals that show significant disparities in pricing (e.g. pricing that ranges from \$150K to \$3M). This may indicate the Scope of Work was not detailed enough and that bidders were unclear on the level of effort or time required to complete the engagement.
- ✓ When reviewing bids, please note that the hourly rates provided must not exceed those in the best and final offer (BAFO) schedules.

## WORKING WITH AN INTEGRITY MONITOR

Once the Recovery Program Participant has procured its Integrity Monitor, below are a few tips to ensure a smooth experience:

- ✓ Designate a designated point of contact and involve other key staff as necessary.
- ✓ Be prepared to supply any relevant guidance, memoranda of understanding (MOUs), and grant or subgrant agreements.
- ✓ Provide the Integrity Monitor with any policies, procedures, program and/or eligibility guidelines, organizational charts, documentation, sample documentation, etc.
- ✓ Consider the best way to share documentation with the Integrity Monitor. Documentation can be shared in many ways, such as uploading to a secure shared site, providing the Integrity Monitor with access to relevant systems, by secured email, etc.
- ✓ Respond to Integrity Monitor requests and questions on a timely basis to allow the Integrity Monitor sufficient time to complete its engagement. Integrity Monitors can add value by identifying areas in which there may be issues and making recommendations to resolve or remediate those issues. Recovery Program Participants should implement any corrective action(s) and provide any documentation identified as missing, if available and necessary.

*\*\* Please be advised the suggestions and recommendations contained herein should not be construed as legal advice. For legal advice, please contact the Attorney General's office. \*\**