



Department of  
Civil Service

## REQUEST FOR PROPOSALS

ENTITLED:

**“Actuarial and Benefits Management Consulting (ABMC) Services”**

RELEASE DATE:

**June 21, 2022**

PROPOSAL DUE DATE:

**August 23, 2022**

**IMPORTANT NOTICE:** A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement, and it will remain in effect until State Comptroller approval of the resultant Contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Designated Contact as listed in Section 2 of this RFP and shall be in compliance with the Procurement Lobbying Law and the NYS Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to RFP, Section 2: Procurement Protocol and Process).

**All inquiries, questions, filings and submission of  
Proposals must be directed in writing to:**

New York State Department of Civil Service  
Attn: Office of Financial Administration, Floor 17  
Agency Building 1, Empire State Plaza  
Albany, New York 12239

[DCSprocurement@cs.ny.gov](mailto:DCSprocurement@cs.ny.gov)

Rebecca Corso  
Acting Commissioner  
NYS Department of Civil Service

Dan Yanulavich  
Director  
Employee Benefits Division

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## **SECTION 1: INTRODUCTION**

### **1.1 Purpose**

The New York State Department of Civil Service (Department or DCS) has issued this Request for Proposals (RFP) to secure the services of a qualified organization to provide actuarial and benefits management consulting services to the Department for use in the administration of the New York State Health Insurance Program (NYSHIP) and other benefits administered by the Department.

This RFP defines minimum Contract requirements, details response requirements, and outlines the Department's process for evaluating responses and selecting a qualified organization (Offeror). Project Services are set forth in detail in Section 3 of this RFP. Capitalized terms used herein shall have the meanings specified in the *Glossary of Defined Terms* (Attachment 14) or in the body of this RFP.

The Department will only contract with a single Offeror, which will be the sole contact regarding all provisions of the Contract. Contract is defined as the agreement, resultant from this RFP, entered between the Department and the single Offeror.

This RFP and other relevant information may be reviewed at: <https://www.cs.ny.gov/ABMCRFP/>.

### **1.2 Period of Performance**

The term of the Contract shall be for a period of five years beginning on January 1, 2023 (Effective Date) and terminating on December 31, 2027, unless otherwise terminated in accordance with the Contract provisions.

In accordance with New York State policy and New York State Finance Law section 112(2), the resulting Contract is deemed executory until it has been approved by the New York State Attorney General's Office (AG) and approved and filed by the New York State Office of the State Comptroller (OSC).

### **1.3 Overview of NYSHIP and Other Benefits Administered by the Department**

1. NYSHIP was established by the New York State Legislature in 1957 to provide essential health insurance protection to eligible employees and retirees (and their eligible dependents) of New York State (NYS), Participating Employers (PEs), and Participating Agencies (PAs). NYSHIP, sponsored by the Council on Employee Health Insurance, is composed of four health insurance plans (all plans are offered on a calendar year basis and the Department holds the contracts with the Program administrators):

- a. The Empire Plan provides health insurance benefits for the employees, retirees, and eligible dependents of NYS and NYSHIP PAs and PEs. It pays for covered hospital services, physicians' bills, prescription drugs, and other covered medical expenses. The benefit design of The Empire Plan is the result of collective bargaining between NYS and the various unions representing its employees. Benefits are administratively extended to non-represented NYS employees, employees of PAs and PEs, and retirees. Therefore, the benefit design is subject to change from time to time as the result of those negotiations, and there are variations in the Empire Plan's benefit design among the bargaining units. The benefit design cannot deviate from that which has been collectively bargained. The Empire Plan, which became fully self-funded as of January 1, 2014, has the highest level of enrollment, with over a million covered lives of the approximate 1.2 million NYSHIP enrollment. Presently, the Empire Plan benefit design consists of four main components that are currently administered under separate contracts:
  - i. Hospital Program benefits, administered by Empire BlueCross, include coverage for hospital inpatient stays, hospice care, emergency care, skilled nursing facilities, infertility services, and the Center of Excellence for Transplants Program.
  - ii. Medical Program benefits, administered by UnitedHealthcare Insurance Company of New York, include coverage for medical and surgical services under the Participating Provider and the Basic Medical Program. Coverage also includes specialty programs such as the Managed Physical Medicine Program and the Home Care Advocacy Program (HCAP).
  - iii. Prescription Drug Program benefits, administered by CVS Caremark, include coverage for prescription drugs dispensed through retail network pharmacies, the Mail Service Pharmacy Process, and the Specialty Pharmacy Program.
  - iv. Mental Health and Substance Use Program benefits, administered by Beacon Health Options, include coverage for network and out-of-network services.
- b. The Excelsior Plan is a variation of the Empire Plan available to NYS local government units that choose to participate in NYSHIP. The Excelsior Plan offers many of the same features of the Empire Plan with a higher degree of cost-sharing between the employer and plan participants.
- c. The NYSHIP Health Maintenance Organizations (HMOs) options are available to State employees and PEs.

- d. The Student Employee Health Plan (SEHP) is a health insurance plan for graduate student employees of the State University of New York system that provides benefits through the various Empire Plan insurance contracts. Like the Empire Plan, the SEHP includes hospital, medical, managed mental health and substance use benefits, and prescription drug benefits. The Department's Employee Benefits Division administers SEHP.
2. The Department administers a number of additional benefits for employees, retirees and other covered populations. Most of these programs are on a five-year procurement schedule. Brief descriptions of these benefits and the covered populations follow:
    - a. Vision Care Plan, administered by Davis Vision, Inc., covers approximately 101,200 enrollees and dependent family members bringing the total number of covered individuals to approximately 227,300. Since its inception in 1982, the Plan has been a self-funded Plan.
    - b. Dental Program, insured by GHI, covers approximately 106,200 Enrollees and dependent family members bringing the total number of covered individuals to approximately 237,200.
    - c. Management/Confidential Group Life Insurance Plan, insured by MetLife, Inc., has 12,700 enrolled employees.
    - d. Income Protection Plan, insured and administered by MetLife, Inc., has 12,700 enrolled employees.
    - e. Workers' Compensation is self-funded and administered by the New York State Insurance Fund.

#### **1.4 Offeror Eligibility**

The Department requests Proposals only from qualified Offerors, as specified below.

1. The Offeror must, at time of Proposal submission and throughout the term of the Contract, possess the legal capacity to enter into a Contract with the Department.
2. The Offeror, at time of Proposal submission and throughout the term of the Contract, must be authorized to conduct business in New York State, or, if the Offeror is not so authorized at time of Proposal Due Date (as specified in Section 1.5 of this RFP), then the Offeror must, at the time of Proposal Due Date, have filed an application for authority to do business in New York State with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to:

<https://dos.ny.gov/form-corporation-or-business>. To register with the Secretary of State, contact: <https://www.dos.ny.gov/corps/index.html>). The Offeror shall notify the Department immediately in the event that there is any change in the above corporate status.

3. The Offeror must represent and warrant that, at time of Proposal submission, it has completed, obtained, or performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the delivery of Project Services (as detailed in Section 3 of this RFP) and agree that it will, during the term of the Contract, comply with any requirements imposed upon it by law or regulation.
4. In addition to the Confidentiality provisions in *Standard Clauses for All Department Contracts* (Appendix B), the Offeror must agree and acknowledge that:
  - a) All claims, enrollment, and other data (i.e., materials) provided by the Department or the Department's agents and/or Contractors is being provided to the Offeror ("Contractor") solely for the purpose of allowing the Contractor to fulfill its duties and responsibilities under the Contract;
  - b) Said materials are and remain the sole property of NYS; and
  - c) The Offeror represents and warrants that it will not share, sell, release, or make the data available to third parties in any manner without the written consent of the Department, except as directed by a court of competent jurisdiction, or as necessary to comply with applicable NYS or federal law.
5. The Offeror must represent and warrant that, at time of Proposal submission, it has maintained an organization for the past three years capable of delivering the Project Services.
6. The Offeror must represent and warrant that, at time of Proposal submission, it has provided comparable services for at least three governmental organizations with 100,000 health plan members for at least the past three years.
7. The Offeror must represent and warrant that, at time of Proposal submission, it possesses adequate staffing resources, financial resources, and organizational capacity to perform the type, magnitude, and quality of work specified in the RFP.
8. The Offeror must represent and warrant that, if selected by the Department as the successful Offeror in this Procurement, all activities associated with Sections 3.2, 3.3 and 3.4 of this RFP, will be overseen by an individual certified as a Fellow in the Society of Actuaries ("FSA"), as applicable.



## **1.5 Timeline of Key Events**

<b>EVENT</b>	<b>DATE</b>
RFP Release Date	June 21, 2022
Deadline for First Submission of Offeror Questions	June 28, 2022
Release Date of First Official Responses to Offeror Questions	July 19, 2022
Deadline for Second Submission of Offeror Questions	July 26, 2022
Release Date of Second Official Responses to Offeror Questions	August 9, 2022
Proposal Due Date and Time	August 23, 2022
Anticipated Technical Management Interviews	September 13, 2022
Anticipated Tentative Contract Award	October 7, 2022
Anticipated Contract Start Date	January 1, 2023

\*Prior to the Offeror's initial contact with the Department, the Offeror must complete and submit *Offeror Affirmation of Understanding and Agreement* (Attachment 1) to the Designated Contact identified in Section 2 of this RFP.

## **SECTION 2: PROCUREMENT PROTOCOL AND PROCESS**

### **2.1 Rules Governing Conduct of Competitive Procurement Process**

All inquiries, questions, filings, and submission of Proposals in regard to the RFP must be directed in writing to the Designated Contact listed below. Proposals may not be submitted by e-mail or facsimile. Any inquiries, questions, filings or submission of Proposals that are submitted to any other contact or physical address shall not be considered as official, binding or as having been received by the Department.

#### **1. Designated Contact**

In accordance with New York State Finance Law § 139-j(2)(a) (Procurement Lobbying Law (PLL)), the following individual is the Designated Contact for this Solicitation. All questions relating to this Solicitation must be addressed to the following Designated Contact.

George Powers  
New York State Department of Civil Service  
Attn: Office of Financial Administration, Floor 17  
Agency Building 1, Empire State Plaza  
Albany, New York 12239  
[DCSprocurement@cs.ny.gov](mailto:DCSprocurement@cs.ny.gov)

#### **2. Restrictions on Contacts Between Offerors and State Staff During the Procurement Process**

- a. Pursuant to New York State Finance Law sections 139-j and 139-k, this Procurement imposes certain restrictions on communications between the Department and an Offeror during the procurement process. An Offeror is restricted from making contacts from the earliest posting, on the Department's website, in a newspaper of general circulation, or in the procurement opportunities newsletter in accordance with Article 4-C of the Economic Development Law, of written notice, advertisement or solicitation of a request for Proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from Offerors intending to result in a Contract with the Department through final award and approval of the Contract by the Department and, if applicable, the Office of the State Comptroller to other than the Designated Contact (unless it is a Contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a)). This time period is defined as the Restricted Period. The Designated Contact for this procurement is set forth in section 2.1(1) of this RFP. Staff is required to obtain certain information from an Offeror whenever contacted about the procurement during the Restricted Period and is required to make a determination of the Offeror's responsibility that

addresses the Offeror's compliance with the statutory requirements. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror is debarred from obtaining governmental procurement contracts. The Department's policy and procedures can be found in the *Procurement Lobbying Policy* (Attachment 2). Further information about these requirements can be found at: <https://www.ogs.ny.gov/ACPL/>.

- b. The Department strictly controls communications between any Offeror and participants in the procurement process. "Offeror" means the individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, who contacts the Department about a governmental procurement during the Restricted Period of such governmental procurement whether or not the caller has a financial interest in the outcome of the procurement; provided, however, that a governmental agency or its employees that communicate with the Department regarding a governmental procurement in the exercise of its oversight duties shall not be considered an Offeror. "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids in response to the solicitation document.

### **3. Submission of Errors or Omissions in this RFP Document**

By participating in activities related to this RFP, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms, including, but not limited to, this process by which an Offeror may submit errors or omissions for consideration. If an Offeror believes there is an error or omission in this RFP, the Offeror may raise such issue as follows:

- a. **Process for Submitting Assertions of Errors or Omissions in RFP Document**
  - i. Time Frame: The Department must receive assertions of errors or omissions in the RFP process which are or should have been apparent prior to the Proposal Due Date, in writing, five Business Days after the Release Date of First Official Responses to Questions specified in Section 1.5 of this RFP.
  - ii. Content: The submission alleging the error or omission must clearly and fully state the legal and/or factual grounds for the assertion and must include all relevant documentation.
  - iii. Format of Submission: All submissions asserting an error or omission must be in writing and submitted to the Designated Contact in hard copy at the address provided in Section 2 of this RFP.

The envelope or package must clearly and prominently display the following statement:

**"Submission of Errors or Omissions for the  
Actuarial and Benefits Management Consulting Services  
Request for Proposals"**

Any assertion of an error or omission which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror and the Offeror shall have no further recourse.

**b. The Review Process for Assertions of Errors or Omissions in RFP**

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or designee.

The Commissioner or designee shall review the matter, and the Commissioner shall issue a written decision within twenty Business Days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and act in the best interests of the State in resolving any assertion of error or omission in this RFP document. The Department may elect to extend the Proposal Due Date as may be appropriate. Notice of any such extension will be provided to all organizations who provided an email address on the submitted *Offeror Affirmation of Understanding and Agreement* (Attachment 1). Notice of any extension will also be posted to:  
<https://www.cs.ny.gov/ABMCRFP/>.

**4. Submission of Questions**

Prospective Bidders will have two opportunities to submit written questions and requests for clarification regarding this RFP. Using the Questions Template (Attachment 4), a prospective Offeror may submit questions concerning the content of this RFP via email to the Designated Contact's address specified in

Section 2 of this RFP. Only those questions received prior to the Questions Due Date specified in Section 1 of this RFP, will be accepted. After the Questions Due Date, the Department will provide an email notification of the posting of all questions and the Department's official answers to all those individuals who provided an email address on the submitted Offeror Affirmation of Understanding and Agreement (Attachment 1) and the Questions Template (Attachment 4). The questions and answers will also be posted to: <https://www.cs.ny.gov/ABMCRFP/>.

**[Note:** See Bid Deviations section below, specifically 6(b) with regard to submission of questions.]

## **5. Submission of Proposal**

- a. The Offeror's Proposal must be organized and separated into three separate sections: Administrative Proposal; Technical Proposal; and Financial Proposal. To facilitate the evaluation process, an Offeror must follow the submission requirements described below:
  - i. One ORIGINAL hard copy and two additional hard copy versions of each of the three sections of the RFP, separated into Administrative, Technical and Financial sections.
  - ii. Each ORIGINAL hard copy of each section must be marked "ORIGINAL," contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror's signature. The remaining hard copies of each section may contain a copy of the official's signature on all forms submitted that require the Offeror's signature and should be numbered sequentially (i.e., Copy #1, Copy #2).
  - iii. A master electronic submission containing all of the ORIGINAL hard copy sections of the proposal must be provided on electronic media. Electronic media shall be included on unprotected Microsoft Windows formatted USB 2.0 or higher storage drive and must be clearly labeled by proposal section and identified as the master electronic submission. In situations where proposal content differs between the ORIGINAL bound hard copies and the master electronic submission, the master electronic submission is deemed controlling. The master electronic submission should be inserted in the Financial Proposal box.
  - iv. The Offeror must submit five additional USB drives, which each contain an electronic copy of the Administrative and Technical

Proposal ONLY. The USB drives must conform to the technical specifications outlined in Section 2 of this RFP. Each of the sixteen electronic copies should be labeled by section and uniquely designated with a number (e.g., “TECHNICAL & ADMINISTRATIVE COPY 1”, “TECHNICAL & ADMINISTRATIVE COPY 2, etc.”). The five USB drives that contain the Administrative and Technical Proposals should be packaged in the sealed box/envelope labeled Administrative Proposal.

- v. Each Proposal must include a table of contents.
  - vi. Each major section of the Proposal, including attachments, must be labeled with an index tab that completely identifies the title of the section, subsection or attachment as named in the table of contents.
  - vii. Each page of the Proposal (both the hard copies and the USB), including attachments, must be dated and numbered consecutively.
- b. Proposals should be placed and packaged together, by section, in sealed boxes/envelopes (i.e., all Administrative Proposals in one box, all Technical Proposals in a second box, and all Financial Proposals in a third box). Each sealed box/envelope should contain a label on the outside, which contains the information below. Each sealed box/envelope should be submitted to the Designated Contact at the address provided in Section 2.1(1) of this RFP.

<p style="text-align: center;"><b>New York State Department of Civil Service</b> <b>Request for Proposals</b> <b><u>“Actuarial and Benefits Management Consulting Services”</u></b></p> <p style="text-align: center;"><b>OFFEROR NAME</b> <b>OFFEROR ADDRESS</b></p> <p style="text-align: center;">Indicate content, as applicable <b>ADMINISTRATIVE, TECHNICAL, or FINANCIAL PROPOSAL</b> <b>There must be no Financial/cost information included in the Offeror’s</b> <b>Administrative Proposal or Technical Proposal, except for proposed performance</b> <b>guarantees.</b></p>
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- c. All Proposals must be mailed or hand-delivered to the address provided in Section 2.1(1) of this RFP. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four hours prior to

delivery. All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section 1.5 of the RFP.

- d. Any proposal received after 3:00 p.m. ET on the Proposal Due Date, as specified in Section 1.5, shall not be accepted by the Department and may be returned to the submitting entity at the Department's discretion. All Proposals submitted become the property of the Department.
- e. The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in accordance with the format set forth in Section 2.1(6) of this RFP and will be included as part of the Offeror's Proposal.
- f. An Offeror is solely responsible for timely delivery of the Proposal to the Department prior to the Proposal Due Date stated in Section 1.5 of this RFP. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Proposal is delivered by mail or courier, the Department recommends that it be sent "Return Receipt Requested", so the Offeror obtains proof of timely delivery. No phone, facsimile or e-mail submission of Proposals will be accepted for this RFP. In addition, it is the sole responsibility of the Offeror to verify that all elements of the proposal submission are complete, correct and without error.

## **6. Bid Deviations**

- a. The Department will not entertain bid deviations to *Standard Clauses for New York State Contracts* (Appendix A). The Department will also not entertain material and substantive bid deviations to the solicitation to *Standard Clauses for All Department Contracts* (Appendix B), and the *Information Security Requirements* (Appendix C). NYS law precludes awarding a contract based on material deviation(s) from the specifications, terms, and/or conditions set forth in the solicitation. Therefore, Proposals containing a bid deviation (including additional, inconsistent, conflicting or alternative terms) that are a material and substantive change from the specifications, terms, and conditions set forth in the solicitation may render the Proposal non-responsive and may result in rejection of the Proposal.
- b. If Offeror has an issue or concern regarding provisions in the solicitation and is considering submission of a proposal containing a bid deviation, Offeror is strongly advised to raise such issues and/or concerns during the question and answer period so that the Department may give due consideration to the issue prior to the submission of Proposals. Failure to use the question and answer period and instead submitting a Proposal

containing a bid deviation could render the entire Proposal non-responsive and rejected in its entirety.

- c. In general, a material and substantive bid deviation is one that would:
  - i. Impair the interests of New York State;
  - ii. Place the successful Offeror in a position of unfair economic advantage;
  - iii. Place other Offerors at a competitive disadvantage; or
  - iv. Which, if it had been included in the original solicitation, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the submission of a Proposal. For example, a deviation that would substantially shift liability (risk) or financial responsibility from the Offeror to New York State would be considered material.
- d. Unless specifically required by the solicitation to be submitted as part of an Offeror's proposal, an Offeror is further advised that its standard, pre-printed material (including but not limited to product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's Proposal are not considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal. Rather, such material shall be deemed by the Department to have been included by Offeror for informational or promotional purposes only. If such materials are requested by the solicitation, an Offeror must ensure that the materials are properly referenced.
- e. To submit a non-material bid deviation, an Offeror must complete and submit the proposed deviation(s) using the *Non-Material Deviations Template* (Attachment 8), as part of the Administrative Proposal. If a non-material bid deviation does not meet these requirements, it shall not be considered by the State and shall be rejected.
- f. An Offeror who does not submit the *Non-Material Deviations Template* (Attachment 8), as part of the Administrative Proposal is presumed to have no bid deviations.

## **7. Notification of Tentative Contract Award**

A tentative award letter will be sent to the selected Offeror indicating a tentative award subject to successful contract negotiations. The remaining Offerors will be



notified of the tentative award and the possibility that failed negotiations could result in an alternative award.

## **8. Debriefing**

Unsuccessful Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made. Debriefings are subject to the *NYS Department of Civil Service Debriefing Guidelines* (Attachment 5). An unsuccessful Offeror's written request for a debriefing shall be submitted to the Designated Contact at the address provided in Section 2.1(1) of this RFP.

## **9. Submission of a Protest**

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, an Offeror agrees to be bound by its terms including, but not limited to, the process by which an Offeror may submit a protest of a non-responsive determination or the selection award for consideration. In the event the Offeror elects to submit a protest of a non-responsive determination, the Offeror agrees it shall not be permitted to also submit a protest on the selection decision. In the event that an Offeror decides to submit a protest, the Offeror may raise such issue according to the following provisions.

### **a. Process for Submitting a Protest of a Non-Responsive Determination or a Selection Decision**

- i. Time Frame: Any protest must be received no later than 5:00 p.m. ET on the tenth Business Day after an Offeror's receipt of written notification by the Department of a non-responsive determination or tentative award.
- ii. Content: The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- iii. Format of Submission: The protest must be in writing and submitted to the Designated Contact at the address provided in Section 2 of this RFP.
- iv. A protest of either a non-responsive determination or a selection decision must have one of the following statements clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for Request for Proposals**

**Actuarial and Benefits Management Consulting Services”**

**OR**

**“Submission of Tentative Award Protest for  
Request for Proposals  
Actuarial and Benefits Management Consulting Services”**

- v. Any assertion of protest which does not conform to the requirements set forth in this section shall be deemed waived by the Offeror, and the Offeror shall have no further recourse.

**b. Review of Submitted Protests**

- i. The Department shall conduct the review process of submitted protests. The Department’s Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, the determination of non-responsiveness, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or the Commissioner’s designee, to support its submission. The Offeror may, but need not, be represented by counsel at such a meeting. The Department shall be represented by counsel at such meeting. Any issues concerning the way the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee.
- ii. The Commissioner, or the Commissioner's designee, shall review the matter, and shall issue a written decision within twenty Business Days after the close of the review process. If additional time is necessary for the issuance of the decision, the Offeror shall be advised of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the Department’s final determination in the matter.
- iii. If an Offeror protests the selection decision or a non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the Contract with the selected Offeror.

## **10. Department of Civil Service Reservation of Rights**

In addition to any rights articulated elsewhere in this RFP, the Department reserves the right to:

- a. Make or not make an award under the RFP, either in whole or in part;
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, such amendments will also be posted to: <https://www.cs.ny.gov/ABMCRFP/> ;
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw this RFP, at any time, in whole or in part, prior to OSC approval of award of the Contract;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;
- l. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Offerors;
- m. For the purposes of ensuring completeness and comparability of the Proposals, analyze submissions and make adjustments or normalize submissions in the Proposal(s), including the Offeror's technical assumptions, and underlying calculations and assumptions used to support the Offeror's computation of costs, or to apply such other methods

it deems necessary to make level comparisons across Proposals;

- n. Use the Proposal, information obtained through any site visits, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this RFP;
- o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Proposal(s) received except to the extent such information/ideas are protected under the New York State Freedom of Information Law, Article 6 of the Public Officers Law as critical infrastructure information or trade secrets;
- q. If the Department determines that contract negotiations between the Department and the selected Offeror are unsuccessful, the Department may invite the Offeror with the next highest Total Combined Score to enter into negotiations for purposes of executing a Contract. Prior to negotiating with the Offeror with the next highest Total Combined Score, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Scores will not be recalculated for any remaining Offerors should contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s);
- r. Unless otherwise specified in this RFP, every offer is firm and not revocable for a minimum period of one hundred and eighty days from the Proposal Due Date as set forth in the RFP; and
- s. Any Offeror whose Proposal might become eligible for a tentative award may be asked to extend the time for which its Proposal shall remain valid if the original award is withdrawn.

## **11. Disclaimer**

The Department is not liable for any costs incurred by any Offeror prior to approval of the Contract by OSC. Additionally, no costs will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement-related activities. Further, the Department shall not be liable for any costs incurred prior to the Implementation Period performing activities set forth in Section 3 of this RFP. The Department has taken care in preparing the data accompanying this RFP (hard copy attachments, website attachments, and sample document attachments). However, the Department does not warrant the

accuracy of the data. The numbers or statistics which appear in hardcopy attachments, website attachments, and sample document attachments referenced throughout this RFP are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Proposal at their own discretion.

## **2.2 Compliance with Applicable Laws, Rules and Regulations, and Executive Orders**

This Procurement is subject to the New York State competitive bidding laws and also governed by, at a minimum, the legal authorities referenced below. An Offeror must fully comply with the provisions set forth in this section of the RFP, as well as the provisions of the *Standard Clauses for New York State Contracts* (Appendix A), the *Standard Clauses for All Department Contracts* (Appendix B) and *Information Security Requirements* (Appendix C), which will become a part of the resulting Contract. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions and whose proposal contains the submission required hereunder.

### **1. Disclosure of Proposal Contents – Freedom of Information Law (FOIL)**

#### **a. NOTICE TO OFFEROR AND ITS LEGAL COUNSEL**

All materials submitted by an Offeror in response to this RFP shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Proposals may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Proposals will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other New York State agencies interested in the provision of the subject services including, but not limited to, the Office of Employee Relations (OER), and the Division of the Budget (DOB), unless otherwise expressly indicated in this RFP. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this RFP.

The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Offeror upon submission. To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding FOIL. If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes

proprietary and/or trade secret or critical infrastructure information and desires that such information not be disclosed pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing a *Freedom of Information Law Request for Redaction Chart* (Attachment 10). The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of *Freedom of Information Law Request for Redaction Chart* (Attachment 10) contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, or summary assertions that material is proprietary, or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed *Freedom of Information Law Request for Redaction Chart* (Attachment 10) must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (USB storage drive and Hard Copy) described below. It should not be included in the Offeror's Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on *Freedom of Information Law Request for Redaction Chart* (Attachment 10) and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed *Freedom of Information Law Request for Redaction Chart* (Attachment 10) form is not submitted, the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable, should be protected from FOIL disclosure.

The FOIL-related materials described herein are not considered part of the Offeror's Proposal and shall not be reviewed as a part of the Procurement's evaluation process.

Acceptance of the identified information by the Department does not constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

b. Requested Redactions (USB Storage Drive and Hard Copy):

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted in the event that its Proposal is the subject of a FOIL request as follows.

The Offeror must provide an electronic copy of the Administrative Proposal, the Technical Proposal, and the Financial Proposal on a separate USB storage drive of the type outlined in RFP Section 2, which reflect the Offeror's requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three Proposal documents with redactions marked, but not applied, that are included on the USB storage drives. The electronic documents must be prepared in PDF format. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe "Mark for Redaction" function; do not use the "Apply Redactions" function; or by highlighting such portions in yellow. The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the USB storage drives and in hard copy must be complete Proposals, including all Attachments. No section may be omitted from the USB storage drive or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, attachments, and charts, please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page. Do not request redaction of Department-supplied materials or information.

During the Proposal evaluation process, the Department may request additional information through clarifying letters. Any requested redactions for additional written material provided by the Offeror in response to the Department's requests also must be submitted following the instructions, above.

## 2. **Public Officers Law**

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law (POL), particularly POL sections 73 and 74, as well as all other provisions of NYS law, rules and regulations, and policy establishing ethical standards for current and former State employees. Failure to comply with these provisions may result in disqualification from the Procurement process, termination, suspension or cancelation of the Contract and criminal proceedings as may be required by law. An Offeror must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed *New York State Required Certifications* (Attachment 7), in the Offeror's Administrative Proposal.

## 3. **New York State Required Certifications**

An Offeror is required to submit the signed *New York State Required Certifications* (Attachment 7) with its Administrative Proposal. This attachment sets forth the Offeror's required certification on the following:

- a. MacBride Fair Employment Principles;
- b. Non-Collusive Bidding;
- c. Executive Order No. 177 regarding discrimination and harassment;
- d. Sexual Harassment Prevention;
- e. Public Officer Law Requirements and Conflict of Interest Disclosure; and
- f. Executive Order No. 16 regarding business operations in Russia.

4. **New York Subcontractors and Suppliers**

An Offeror is required to complete *New York State Subcontractors and Suppliers* (Attachment 11). New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in NYS, an Offeror for this RFP is strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles. *New York State Subcontractors and Suppliers* (Attachment 11) must be submitted with the Offeror's Administrative Proposal.



## **SECTION 3: PROJECT SERVICES**

The Department is seeking a qualified Offeror to provide actuarial and benefits management consulting services to the Department for use in the administration of NYSHIP and other benefits administered by the Department.

For the purpose of submitting a Proposal, an Offeror must:

1. Assist the Department in developing Empire Plan premium rates based on recommendations made by those vendors that hold a contract with the Department for the Hospital Program, Medical Program, Prescription Drug, and Mental Health and Substance Use Disorder Program;
2. Perform actuarial valuations of NYS postemployment benefits; and
3. Provide the Department with a full range of ad hoc benefit consulting services.

### **3.1 Account Team**

The Department expects the successful Offeror to have in place a proactive, experienced account leader and team who have the responsibility and authority to coordinate the appropriate resources to implement and administer Project Services (hereinafter "Account Team").

#### **1. Duties and Responsibilities**

- a. The Offeror must designate a single account executive ("Project Team Leader") accountable to the Department and responsible for ensuring that the needs of the Department are met;
- b. The Project Team Leader must be able to maintain and adjust staffing patterns at appropriate levels to provide services as requested by the Department;
- c. The Offeror must ensure that all activities associated with Project Services 3.2, 3.3, and 3.4, as applicable, will be overseen by an individual certified as a Fellow in the Society of Actuaries ("FSA");
- d. The Offeror must ensure that its Account Team notifies the Department of any actual or anticipated events impacting the delivery of Project Services and present options available to minimize or eliminate the impact of those events on the delivery of Project Services; and
- e. The Offeror must notify the Department in writing of changes in key project management team personnel.

### **3.2 Premium Rate Development**

The Department develops annual Empire Plan premium rates based on recommendations made by the Empire Plan vendors for each of the Plan's component Contracts, specifically: the Empire Plan's Hospital, Medical, Prescription Drug, and Mental Health and Substance Use Disorder Contracts. Since the Empire Plan is self-funded, the Department seeks assistance from the Contractor in the review of the reasonableness of the vendors' rate recommendations.

#### **1. Duties and Responsibilities**

During the term of the Contract, the Contractor shall:

- a. Submit to the Department the Contractor's independent premium rate estimates not later than September 1<sup>st</sup> of each year of the Contract.
- b. Review and provide a written evaluation of the Empire Plan vendors' rate proposals. This report, which will include a review of all factors used by the vendors to determine premium requirements, will be due no later than October 15<sup>th</sup> of each year of the Contract.
- c. Support the Department in its analysis of the Empire Plan rates submitted by the Contractors of the Hospital Program, Medical Program, Prescription Drug, and Mental Health and Substance Use Disorder Program;
- d. Attend and participate in all meetings as deemed necessary by the Department.
- e. Assist the Department in presenting rate proposals to OER, DOB, the Joint Labor Management Committee (JLMC), and other entities, as the Department deems necessary.
- f. Support the Department by providing comparative analyses, as requested, using data of other large employers.

### **3.3 Governmental Accounting Standards Board Valuation**

Governmental Accounting Standards Board Statement No. 75 ("GASB 75") addresses Other Postemployment Benefits ("OPEB") by state and local governments. In accordance with the requirements set forth in GASB 75, the Contractor shall perform an actuarial valuation and develop related reports for the benefit of the Department. In addition to the OPEB of State employees, the valuation must include the OPEB for employees of the State University of New York ("SUNY") Campuses, Hospitals and Construction Fund for the various differing fiscal years that will ultimately roll up into the fiscal year financial statements of New York State for the year under review. The NYSHIP PEs and PAs are not included in the valuation; however, they each receive a

report that presents the actuarial assumptions that were used in NYS' valuation as guidance to assist them in preparing their own valuations.

The scope of the valuation is limited to post-retirement healthcare benefits. The State administers other benefits (e.g., dental and life insurance) for retirees, but there is no employer cost-sharing.

**1. Duties and Responsibilities**

During the term of the Contract, the Contractor must:

- a. Produce a report that presents the actuarial assumptions the Contractor will use for the Valuation along with the rationale for those assumptions ("The Actuarial Assumptions Report"). The Actuarial Assumptions Report is due no later than February 1<sup>st</sup> of each year of the Contract, with the exception of the Actuarial Assumption Report for the 2023 Actuarial Valuation Report which will be due by April 1, 2024.
- b. Perform an OPEB actuarial valuation of NYS and SUNY' on an annual basis and produce a comprehensive report in accordance with the schedule set forth in the table below.

<b>Report Name</b>	<b>Due Date</b>
2023 SUNY Actuarial Valuation Report	May 31, 2024
2023 NYS Actuarial Valuation Report	November 15, 2024
2024 SUNY Actuarial Valuation Report	May 31, 2025
2024 NYS Actuarial Valuation Report	November 15, 2025
2025 SUNY Actuarial Valuation Report	May 31, 2026
2025 NYS Actuarial Valuation Report	November 15, 2026
2026 SUNY Actuarial Valuation Report	May 31, 2027
2026 NYS Actuarial Valuation Report	November 15, 2027

- c. Provide two reports by June 30<sup>th</sup> following the Valuation year, that present the actuarial assumptions used for NYS' Valuation, one for distribution to PEs ("PE Actuarial Assumptions Report") and the other to PAs ("PA Actuarial Assumptions Report"), to provide assistance in performing their GASB 75.
- d. Assist the Department in:

- i. Responding to requests for information from DOB, SUNY, OSC, and/or any other entity as determined by the Department;
- ii. Preparation for legislative testimony; and
- iii. Responding to questions on completed valuation(s) posed by auditors Contracted to audit NYS' financial records.

### **3.4 Ad Hoc Consulting Services**

The Contractor shall be expected to provide the Department with a full range of ad hoc benefit consulting services. In its delivery of ad hoc services, the Contractor's analysis should consider and make use of the most current employee benefit data and information in the marketplace. The Contractor shall be expected to possess and/or obtain and make available to the Department a full breadth of benefit consulting services, including such areas as plan design consulting, provider network access analysis, provider network discount analysis, consulting on vendor procurements, regulatory monitoring and compliance guidance, risk management, quality care programs, wellness programs, disease management, performance based Contracting, advanced primary care, total cost of care modeling, analytical support, and discount analysis

The Contractor shall, as requested by the Department on a case-by-case basis, be expected to routinely analyze and prepare comprehensive cost and benefit analysis ("Ad Hoc Consulting Services Projects" or "Ad Hoc Projects"). Such Ad Hoc Projects often must be undertaken and completed within very limited timeframes; frequently within 2-3 days of the request and, on occasion, within a twenty-four hour period for certain high priority tasks. The Contractor shall be required to submit final deliverable(s) required for completion of an Ad Hoc Project within timeframes mutually agreed upon by the Department and the Contractor.

#### **1. Duties and Responsibilities**

The Contractor shall be expected to, at the rates set forth in the Contractor's Financial Proposal, provide a full range of benefit consulting services. Such services may include, but are not limited to:

- a. Assisting the Department with the analysis, design and/or review of solicitation instruments (e.g., requests for proposals) and their associated evaluation criteria developed by the Department for any of the benefit programs administered by the Department and/or the evaluation of specified proposals received in regard thereto;
- b. Providing the Department with analysis of federal and state legislative proposals, including advice on compliance with such legislation;

- c. Assisting the Department with benefit and premium renewal activities for any of the benefit programs administered by the Department;
- d. Assisting the Department with any actuarial valuations;
- e. Providing recommendations regarding proposed benefit/plan design changes;
- f. Performing cost/savings analyses of collectively bargained plan changes; and
- g. Reviewing vendors' Contract provisions and provide recommendations.
- h. Ad Hoc Consulting Services Guarantee: The Contractor must guarantee that analysis provided for an Ad Hoc Project will be based on the most current information available, be comprehensive, and be actuarially sound and reasonable. Further, consistent with the provisions in RFP Section 5.5, Ad Hoc Project final deliverables must be provided to the Department no later than the due date agreed upon by the Department and the Contractor for a given Ad Hoc Project final deliverable.

### **3.5 Transition Services**

The Contractor is required to provide Contractor-related obligations and deliverables to the Department after Contract termination, until all deliverables (as defined in Section 3 of this RFP) have been provided to the Department. Payment for these services will be based on the Offeror's Year 5 proposed costs from the *Premium Rate Development and GASB Proposed Costs Form* (Attachment 16) and the *Ad Hoc Consulting Services Cost Form* (Attachment 17).

In addition to any requirements cited in the RFP including in the *Standard Clauses for New York State Contracts* (Appendix A), the *Standard Clauses for All Department Contracts* (Appendix B), and the *Information Security Requirements* (Appendix C), the Offeror must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the services under any subsequent Agreement. If requested, the Contractor shall cooperate with the Department to develop a detailed transition plan upon notice from the Department.

## **SECTION 4: ADMINISTRATIVE PROPOSAL**

This section of the RFP sets forth the requirements for the Offeror's Administrative Proposal. The Department will consider for evaluation and selection purposes only those Proposals the Department determines to be in compliance with the requirements set forth in this section of the RFP. Any Offeror which fails to satisfy any of these requirements shall be eliminated from further consideration.

The Offeror's *Administrative Proposal* must respond to all of the following items as set forth below in the order and format specified and using the forms set forth in this RFP. Additional details pertaining to the required forms are found in Section 2 of this RFP.

### **4.1 Formal Offer Letter**

The Offeror must submit a formal offer in the form of the *Formal Offer Letter* (Attachment 3). The formal offer must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the State. The copy of the Offeror's Administrative Proposal marked "ORIGINAL" requires a letter with an original signature; the remaining copies of the Offeror's Administrative Proposal may contain photocopies of the signature. Except as otherwise permitted under section 2.1(6), Bid Deviations, the Offeror must accept the terms and conditions as set forth in this RFP, *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C) and *Glossary of Defined Terms* (Attachment 14), and agree to enter into a Contractual Agreement with the Department containing, at a minimum, the terms and conditions identified in this RFP and appendices as cited herein. If an Offeror proposes to include the services of a Subcontractor(s) or Affiliate(s), the Offeror must be required to assume responsibility for those services as "Prime Contractor." The Department will consider the Prime Contractor solely responsible for Contractual matters.

### **4.2 Offeror Attestation Form**

The Offeror must complete and submit an executed copy of the *Offeror Attestations Form* (Attachment 12) attesting that it meets or exceeds the criteria for eligibility to bid as set forth in Section 1 of this RFP. A person legally authorized to represent the Offeror must execute this certification.

### **4.3 Subcontractors or Affiliates**

The Offeror must complete the *Subcontractors or Affiliates* form (Attachment 9) to identify all Subcontractors or Affiliates with whom the Offeror subcontracts to provide Project Services. For purposes of reporting in the *Subcontractors or Affiliates* form (Attachment 9), Subcontractors include:

1. All vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from this RFP; or
2. Any vendor who will provide Project Services in an amount lower than the \$100,000 threshold, and who is a part of the Offeror's Account Team (described in section 3.1, Account Team).

For each Subcontractor identified, the Offeror must complete and submit the *Subcontractors or Affiliates* form (Attachment 9) and indicate whether or not, as of the date of the Offeror's Proposal, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the RFP. On the *Subcontractors or Affiliates* form (Attachment 9), the Offeror must:

1. Mark the applicable box if the Offeror will not be subcontracting with any Subcontractor(s) or Affiliate(s) to provide Project Services.
2. Indicate whether or not, as of the date of the Offeror's Proposal, a subcontract (or shared services agreement) has been executed between the Offeror and the Subcontractor or Affiliate for services to be provided by the Subcontractor or Affiliate relating to this RFP.
3. Provide a brief description of the services to be provided by the Subcontractor or Affiliate.
4. Provide a description of any current relationships with such Subcontractor or Affiliate and the clients/projects that the Offeror and Subcontractor or Affiliate are currently servicing under a formal legal agreement or arrangement, the date when such services began and the status of the project.

#### **4.4 New York State Standard Vendor Responsibility Questionnaire**

The Offeror must complete and submit an executed copy of the New York State Vendor Responsibility Questionnaire. A person legally authorized to represent the Offeror must execute the questionnaire. The questionnaire must be completed by all Subcontractors as defined above.

The Department recommends each Offeror file the required Questionnaire online via the New York State VendRep System. To use the VendRep System, please refer to: <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

By submitting a Proposal, the Offeror agrees to fully and accurately complete the Questionnaire. The Offeror acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Offeror is responsible, and that the State will rely on the Offeror's responses to the Questionnaire when making its responsibility determination. The Offeror agrees that if it is found by the State that the

Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

#### **4.5 New York State Tax Law Section 5-a**

Tax Law § 5-a requires certain Offerors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Offeror's sales delivered into NYS is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any Affiliates and subcontractors whose sales delivered into NYS exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

An Offeror is required to file the completed and notarized Form ST-220-CA with the Department certifying that the Offeror filed the ST-220-TD with DTF. If the forms are not completed and returned with bid submission, the Offeror should complete and return the certification forms within five Business Days from the date of request. Failure to make either of these filings may render an Offeror non-responsive and non-responsible. The Offeror must take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Offeror certification forms and instructions are provided below.

1. Form ST-220-TD must be filed with and returned directly to DTF and can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Offeror, its Affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.
2. Form ST-220-CA must be submitted to the Department. This form provides the required certification that the Offeror filed the ST-220-TD with DTF. This form can be found at: [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

#### **4.6 Insurance Requirements**

Prior to the start of work the Offeror shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this RFP, policies of insurance as required by this section, written by companies that have



an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by DFS to issue insurance in the State of New York. The Department may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by the Department does not, and shall not be construed to, relieve an Offeror of any obligations, responsibilities or liabilities under this RFP or any Contract resulting from this RFP. The Offeror shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of any Contract resulting from this RFP.

## **1. General Conditions**

- a. All policies of insurance required by this Solicitation or any Contract resulting from this RFP shall comply with the following requirements:
  - i. Coverage Types and Policy Limits. The types of coverage and policy limits required from the selected Offeror are specified in Section 4.6(2) of this RFP.
  - ii. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in any Contract resulting from this RFP, all policies of insurance shall be written on an occurrence basis.
  - iii. Certificates of Insurance/Notices. The selected Offeror shall provide the Department with a Certificate or Certificates of Insurance, in a form satisfactory to the Department, as detailed below, and pursuant to the timelines set forth in Section 4.6(1)(m) of this RFP. Certificates should reference the Solicitation or award number and shall name the New York State Department of Civil Service, Agency Building 1, Empire State Plaza, Albany, NY 12239, as the certificate holder.
  - iv. Document Submissions. An Offeror shall deliver to the Department evidence of the insurance required by this RFP and any Contract resulting from this RFP upon notification of tentative award.

- b. Certificates of Insurance shall:
- i. Be in the form acceptable to the Department and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
  - ii. Disclose any deductible, self-insured retention, aggregate limit, or any exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
  - iii. Be signed by an authorized representative of the insurance carrier of the referenced insurance carriers; and
  - iv. Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement as applicable: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.
- c. Only original documents (Certificates of Insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted. The Department generally requires an Offeror to submit only certificates of insurance and additional insured endorsements, although the Department reserves the right to request other proof of insurance. An Offeror should refrain from submitting entire insurance policies, unless specifically requested by the Department. If an entire insurance policy is submitted but not requested, the Department shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by the Department does not constitute proof of compliance with the insurance requirements and does not discharge an Offeror from submitting the requested insurance documentation.
- d. Primary Coverage: All liability insurance (excluding Professional Liability insurance) policies where the Department is required to be included as an additional insured, shall provide that the required coverage shall be primary and non-contributory to other insurance available to the Department and their officers, agents, and employees. Any other insurance maintained by the Department and their officers, agents, and employees shall be in excess of and shall not contribute with the Offeror's insurance.

- e. Breach for Lack of Proof of Coverage: The failure to comply with the requirements of this RFP at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the Department and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.
- f. Self-Insured Retention/Deductibles: Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from the Department. Such approval shall not be unreasonably withheld, conditioned or delayed. An Offeror shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Offeror is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
- g. Subcontractors: Prior to the commencement of any work by a Subcontractor, the Offeror shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement (ISO coverage form CG 20 38 04 13), or the equivalent, evidencing such coverage shall be provided to the Offeror prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section 4.6(1)(m) of this RFP, as applicable, and shall be provided to the Department upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
- h. Waiver of Subrogation: For all liability policies (with the exception of Professional Liability Insurance and Cyber Liability Insurance) and the workers' compensation insurance required below, the Offeror shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department and their officers, agents, and employees, or, if such waiver is unobtainable:
  - i. An express agreement that such policy shall not be invalidated if the Offeror waives or has waived before the

casualty, the right of recovery against the Department and their officers, agents, and employees; or

- ii. Any other form of permission for the release of the Department or any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees.

A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

- i. Additional Insured: The Offeror shall cause to be included in each of the liability policies required below (excluding Professional Liability Insurance) coverage for on-going work and operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage) the Department and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Department pursuant to the timelines set forth in Section 4.6(1)(m) of this RFP. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Offerors who are self-insured, the Offeror shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Offeror would have been required to pursuant to this RFP had the Contractor obtained such insurance policies.
- j. Excess/Umbrella Liability Policies: Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form, must be provided upon request. Unrelated underlying policies included in the schedule that are not required to meet the insurance requirements may be redacted from the Schedule.
- k. Notice of Cancellation or Non-Renewal: Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five Business Days of receipt of any notice of cancellation or nonrenewal of insurance, the Offeror shall provide the Department with a copy of any such notice received from an insurer together with proof of replacement coverage that

complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

- I. Policy Renewal/Expiration: Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to the Department. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to the Department, the Offeror shall immediately cease work. The Offeror shall not resume work until authorized to do so by the Department.
  
- m. Deadlines for Providing Insurance Documents after Renewal or Upon Request: As set forth herein, certain insurance documents must be provided to the Department contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Offeror shall provide the applicable insurance document to the Department as soon as possible but in no event later than the following time periods:
  - i. For certificates of insurance: 5 Business Days from request or renewal, whichever is later;
  - ii. For information on self-insurance or self-retention programs: 15 Calendar Days from request or renewal, whichever is later;
  - iii. For other requested documentation evidencing coverage: 15 Calendar Days from request or renewal, whichever is later;
  - iv. For additional insured and waiver of subrogation endorsements: 30 Calendar Days from request or renewal, whichever is later; and
  - v. For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 Business Days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Offeror shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Department, the Department shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 Calendar Days.

## 2. Specific Coverage and Limits

- a. Commercial General Liability: Commercial General Liability Insurance, (CGL) shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract). Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the Insurance Services Offices (ISO) Commercial General Liability (CGL) policy) so as to limit coverage against Claims that arise out of the work, or that remove or modify the “insured contract” exception to the employers’ liability exclusion, or that do not cover the Additional Insured for Claims involving injury to employees of the Named Insured or subcontractors, are not acceptable. Policy shall include bodily injury, property damage, and broad form contractual liability coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence – \$1,000,000
- ii. General Aggregate – \$2,000,000
- iii. Personal Advertising Injury – \$1,000,000

Coverage shall include, but not be limited to, the following:

- i. Premises liability;
  - ii. Independent contractors/subcontractors;
  - iii. Blanket contractual liability, including tort liability of another assumed in a contract;
  - iv. Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation; and
  - v. Cross liability for additional insureds.
- b. Business Automobile Liability Insurance: The Offeror shall maintain Business Automobile Liability Insurance in the amount of at least \$1,000,000 each accident, covering liability arising out of automobiles used in connection with performance under any Contract resulting from

this RFP, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

- c. Professional Errors and Omissions Insurance: The Offeror shall maintain Professional Errors and Omissions (Professional Liability) in the amount of at least \$5,000,000 each occurrence, for claims arising out of but not limited to delay or failure in diagnosing a disease or condition and alleged wrongful acts, including breach of contract, bad faith, and negligence. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.

If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to the Department prior to the policy's expiration or cancellation.

- d. Data Breach/Cyber Liability Insurance: An Offeror is required to maintain during the term of any Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance in the amount of at least \$5,000,000 each claim, including coverage for failure to protect confidential information and failure of the security of the Offeror's computer systems or the Department systems due to the actions of the Offeror which results in unauthorized access to the Department or their data. Coverage may be satisfied through alternative insurance policies. Said insurance shall provide coverage for damages arising from, but not limited to the following:

- i. Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- ii. Personally, identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and

- vi. Cybertheft of customer's property, including but not limited to money and securities.

If the policy is written on a claims-made basis, Contractor must submit to the Department an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

- e. Workers' Compensation Insurance: To comply with coverage provisions of Workers Compensation Law (WCL) Section 57, businesses must be legally exempt from obtaining workers' compensation insurance coverage; or obtain such coverage from insurance carriers; or be a Board-approved self-insured employer or participate in an authorized group self-insurance plan. An Offeror must provide one of the following forms:
  - i. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov)); or
  - ii. Form C-105.2 (9/15), Certificate of Workers' Compensation Insurance, sent to the Department by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to the Department upon request from the Contractor; or
  - iii. Form SI-12, Certificate of Workers' Compensation Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
  - iv. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.
- f. Disability Benefits Insurance: To comply with coverage provisions of WCL Section 220(8), regarding disability benefits, businesses must be legally exempt from obtaining disability benefits insurance coverage; or obtain such coverage from insurance carriers; or be a Board-approved self-insured employer. An Offeror must provide one of the following forms:



- i. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.businessexpress.ny.gov](http://www.businessexpress.ny.gov)); or
- ii. Form DB-120.1, Certificate of Disability Benefits Insurance, sent to the Department by the Contractor's insurance carrier upon request; or
- iii. Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

## **SECTION 5: TECHNICAL PROPOSAL REQUIREMENTS**

The purpose of Section 5 of the RFP is to set forth the submissions required of the Offeror. The Offeror's Technical Proposal must contain responses to all required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on the responses to the required submissions contained in Section 5 of this RFP.

An Offeror must not include any cost information in the Technical Proposal, including attachments. Specific savings estimates (dollars or percentages) must not be quoted in the Technical Proposal or in any attachments submitted with the Technical Proposal.

### **5.1 Executive Summary**

1. The Offeror must submit an Executive Summary outlining its overall program and its capacity to administer the Project Services outlined in this RFP. The Executive Summary must include:
  - a. The name and address of the Offeror's main and branch offices and the name of the senior officer responsible for this account.
  - b. A concise description of the Offeror's understanding of the requirements presented in the RFP, the Department's needs, approach, and how the Offeror can assist the Department in accomplishing its objectives.
  - c. A succinct statement that supports the Offeror has:
    - i. Maintained an organization, for a continuous period of at least the past three years, capable of performing the Project Services specified in the RFP; and
    - ii. Provided services comparable to the Project Services outlined in the RFP to governmental organizations with at least 100,000 health plan members, for a continuous period of at least the past three years.
  - d. A succinct statement explaining previous experience providing actuarial and benefits management consulting services to other governmental organizations administering health benefits programs and detail how that experience, in general and specifically in regard to the clients given as Client References in response to RFP Section 3, qualifies the Offeror and, if applicable, any subcontractors, to perform the required Project Services.
  - e. A concise description of the Contractor's full range of benefits consulting services offering and experience addressing, at a minimum, the areas of:

plan design consulting; provider network access analysis; consulting on vendor procurements; regulatory monitoring and compliance guidance; quality care programs; wellness programs; disease management; performance based contracting; advanced primary care; total cost of care modeling; analytical support; and discount analysis.

- f. An explanation as to how the Offeror proposes to handle administrative responsibilities, such as the billing and invoicing of charges for services to the Department, including a description of how the Offeror will ensure only accurate and complete billing of charges are submitted to the Department.
- g. A description of the qualifications and experience of staff assigned to provide Information Technology (IT) services in support of the Project Management Team's delivery of the required services and how they will interface with the Project Management Team to complete assignments and reports.
- h. An overview of the Offeror's IT system and programming capabilities and its capacity to accept data from and exchange data with the Department and those contractors that hold a contract with the Department for the Hospital Program, Medical Program, Prescription Drug Program, and Mental Health and Substance Use Disorder Program , including a description of security measures used to ensure privacy and confidentiality of data is maintained in compliance with the RFP requirements.
- i. A description of any additional services/benefits that the Offeror provides its customers at no additional charge, including the Department, if the Offeror is selected.

## **5.2 Account Team**

1. The Offeror must complete the *Biographical Sketch Form* (Attachment 13) for all key personnel including Subcontractor key staff, if any, of the proposed Account Team. Where individuals are not named, include qualifications of the individuals that will fill the positions.
2. The Offeror must also:
  - a. Provide an organizational chart and narrative description illustrating how the Offeror proposes to administer, manage, and oversee all aspects of the Projects.
  - b. Describe the experience, training and education (including certifications) of the individual who will assume the role of Project Team Leader,

including a description of the individual's experience with clients similar in size and scope of the Department.

- c. Describe where the Project Team will be physically located.
- d. Provide a description of how the Offeror proposes that the Project Management Team will successfully handle the Project Services (including an indication of the percentage of time, by team member, dedicated to the Project Service); manage the Department's account and interface with the Department in its delivery of Project Services.
- e. Provide a description of the process by which the Offeror proposes to provide notification to the Department of actual or anticipated events impacting the delivery of Project Services and the presentation of options available to minimize or eliminate the impact of those events on the delivery of Project Services.
- f. Provide a description of how the Offeror proposes to provide additional resources, should the need arise, from within the organization and/or from a third party; for those positions for which an individual(s) has not been named at time of Proposal submission; a description of how the Offeror proposes to recruit the person(s) to fill the position; a description of how the Offeror proposes to recruit replacement personnel, should one or more Project Management Team members leave during the term of the Contract; and a description of the steps that will be taken to ensure the continuity of Project Management Team members throughout the term of the Contract.
- g. Provide reporting relationships and the responsibilities of each key position of the account management team and how the team will interact with other business units or functional areas within the Offeror's organization. The Offeror must include the percentage of time (by position) dedicated to the Program and reporting relationships.
- h. Describe how the account management team interfaces with senior management and ultimate decision makers within the Offeror's organization.

### **5.3 Premium Rate Development**

1. The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to develop the annual premium rates, including the following:
  - a. A detailed description of how experience and premium requirements for each of the Empire Plan vendors will be projected.

- b. A description of the quality assurance process to be used to ensure reports, documents, and services are complete, accurate, and of the quality required by the Department.
- c. An example of a Final Report and Recommendations of Plan Funding Requirements.

#### **5.4 Governmental Accounting Standards Board Valuation**

The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to perform the actuarial valuation, including a description of the Offeror's prior experience in providing GASB 75 valuation and reporting services for other governmental organizations and a demonstrated understanding of the scope and purpose of the project.

#### **5.5 Ad Hoc Consulting Services**

The Offeror must provide a narrative which includes the following:

1. A description of the proposed process by which the Offeror will plan, complete and report back to the Department on Ad Hoc Projects;
2. A description of the steps the Offeror will take to ensure that due dates and deadlines for the required ad hoc deliverables are met, including how the Offeror will ensure that this process meets the time constraints and specialized needs of the Department.
3. A description of the quality assurance process to be used to ensure requested Ad Hoc reports, documents and services are complete, accurate and of the quality required by the Department.
4. A description of two prior Ad Hoc Projects undertaken by the Offeror for a client(s). (The ad hoc projects provided cannot be for Ad Hoc Projects undertaken for the benefit of the Department, DOB and/or OER.) Each of the projects should have, in the opinion of the Offeror, required a comprehensive analysis of a highly complex issue that was of urgent nature to the client.
5. The Offeror should complete and submit *Project Abstract* (Attachment 15), for each of the two examples discussed above using the instructions provided in the Attachment.

6. Ad Hoc Consulting Services Guarantee: In this part of its Technical Proposal, the Offeror must state its agreement and guarantee that, in accordance with the requirements of listed in Section 3.4 of the RFP.

Utilizing the *Performance Guarantees* form (Attachment 6), the Offeror must propose a forfeiture amount for each twenty-four hour period, or part thereof, beyond the due date for the Ad Hoc Project's report or final deliverable, as negotiated by the Parties on a case-by-case basis, that the report/deliverable is not provided to the Department. The forfeited amount (Standard Credit Amount) is \$550.00 for each twenty-hour period the Ad Hoc report is not provided to the Department. However, an Offeror may propose higher or lesser amounts.

## **SECTION 6: FINANCIAL PROPOSAL**

This section of the RFP sets forth the requirements for the Offeror's Financial Proposal submission and the cost structure required by the Department for Offerors to use in developing their submission. The Offeror's Financial Proposal must respond to all the following mandatory sections as set forth below in the formats as specified.

The sole compensation for the Contractor under the Contract will be payments based on the provisions set forth in this section of the RFP. During the term of the Contract, amounts paid for which it is subsequently determined that the Contractor was not entitled, if any, must be refunded to the Department. Submission of an invoice and payment thereof shall not preclude the Department from recovery or offset of payment in any case where Project Services as delivered are found to deviate from the terms and conditions of the Contract.

Evaluation of Financial Proposals will be performed in accordance with the provisions presented in Section 7.3 of the RFP.

The Financial Proposal must consist of the following:

### **6.1 Premium Rate Development and GASB**

Throughout the term of the Contract, the Offeror will be paid for the Project Services cited in Section 3.2 and 3.3 of the RFP after its delivery to the Department of each of the deliverables noted in *Premium Rate Development and GASB Proposed Costs Form* (Attachment 16) and upon the Department's review and acceptance of the work product.

Using the *Premium Rate Development and GASB Proposed Costs Form* (Attachment 16), the Offeror must provide the proposed fixed all-inclusive costs for each of the cited deliverables. Such proposed costs must include all preparatory work regarding the deliverable, including meetings with the Department to address questions concerning the deliverables.

The Offeror's proposed unit rates as set forth in the *Premium Rate Development and GASB Proposed Costs Form* (Attachment 16), must be guaranteed for the term of the Contract.

### **6.2 Ad Hoc Consulting Services**

Throughout the term of the Contract, the Offeror will be paid for the Project Services cited in Section 3.4 based on the fixed hourly rates set forth in the Offeror's cost proposal as proposed in *Ad Hoc Consulting Services Cost Form* (Attachment 17). The fixed hourly rates proposed by the Offeror must be inclusive of all direct and indirect

costs, overhead expenses, fees, and profit. Such rates must not include travel which will not be required by the Department.

Using the *Ad Hoc Consulting Services Cost Form* (Attachment 17), the Offeror must quote fixed hourly rates for each of the four listed position titles. These position titles and the Offeror's quoted fixed hourly rates will be used by the Contractor when billing for Project Services rendered.



## **SECTION 7: EVALUATION AND SELECTION CRITERIA**

The Department seeks to contract with a single Offeror to provide actuarial and benefits management consulting services to the Department for use in the administration of NYSHIP and other benefits administered by the Department. To this end, the Department intends to select the responsive and responsible Offeror whose Proposal offers the “Best Value” to the State, as defined in Section 7.5 of this RFP.

### **7.1 Administrative Proposal Evaluation**

Proposals determined by the Department to satisfy the submission requirements set forth in Section 4 of this RFP will be reviewed by an evaluation team composed of staff from the Department. An Offeror’s Proposal shall not be considered for award until the Offeror submits a *Formal Offer Letter* (Attachment 3) and an *Offeror Attestations Form* (Attachment 12).

### **7.2 Technical Proposal Evaluation**

The evaluation of the Offeror’s Technical Proposal will be based on that Offeror’s written Technical Proposal and responses to clarifying questions (if any) and, as deemed necessary by the Department, Technical Management Interviews conducted to amplify and/or clarify information in the Offeror’s Technical Proposal.

#### **1. Technical Score Ratings**

The Technical Proposal of any Offeror meeting the requirements set forth in Section 7.1 of this RFP will be evaluated by the Department and representatives from other State agencies. Each Offeror’s Technical Proposal will be evaluated based on the following rating scale and criteria as applied to each response as required in Section 5 of this RFP. A rating of “Excellent” equates to a score of 4 for each evaluated response. Each reduction in the ratings results in a one-point reduction in the score such that a rating of “poor” equates to a score of 1.

a. Excellent (4)

The Offeror far exceeds the criteria. The services described indicate that the Offeror will provide high-quality services and is proactive and innovative.

b. Good (3)

The Offeror exceeds the criteria. The services described indicate that the Offeror will exceed the requirements of the RFP. The Offeror demonstrates some innovative features not shown in typical proposals.

c. Meets Criteria (2)

The Offeror meets but does not exceed the criteria. The services described indicate that the Offeror will meet the requirements of the RFP.

d. Poor (1)

The Offeror misinterpreted or misunderstood the question; or the Offeror does not answer the question/criteria in a clear manner, or the Offeror does not answer the question; or the Offeror does not meet the criteria.

**2. Performance Guarantee Ratings**

The Offeror's commitment to meet the levels of standards it outlines in its proposal will be verified by reviewing responses to related Performance Guarantee questions and reviewing the Offeror's proposed credit to the Administrative Fee (credit amount) for its failure to meet each of its proposed performance guarantees.

A rating of "excellent" equates to a score of 4 for each evaluated service level standard. Each reduction in the ratings results in a reduction in the score such that a rating of "poor" equates to a score of 1. An Offeror may propose performance guarantees that exceed the service level standards presented in this RFP. Proposed Performance Guarantees are contained within the *Performance Guarantees* form (Attachment 6) and will be evaluated using the following criteria:

a. Excellent (4)

- i. The Offeror's proposed performance guarantee exceeds the service level standard contained within this RFP; and
- ii. The Offeror's proposed credit amount is 125% or more of the Standard Credit Amount stated within this RFP.

b. Good (3)

- i. The Offeror's proposed performance guarantee equals the service level standard contained within this RFP, and the Offeror's proposed credit amount is 125% or more of the Standard Credit Amount stated within this RFP; or
- ii. The Offeror's proposed performance guarantee exceeds the service level standard contained within this RFP; and the Offeror's proposed credit amount is greater than 100% but less

than 125% of the Standard Credit Amount stated within this RFP.

c. Meets Criteria (2)

- i. The Offeror’s proposed performance guarantee equals or exceeds the service level standard contained within this RFP; and
- ii. The Offeror’s proposed credit amount equals the Standard Credit Amount stated within this RFP.

d. Poor (1)

- i. The Offeror’s proposed performance guarantee is below the service level standard contained within this RFP regardless of the credit amount proposed by the Offeror; or
- ii. The Offeror’s proposed credit amount is less than 100% or less of the Standard Credit Amount stated within this RFP regardless of the level of performance the Offeror pledges.

**3. Allocation of Technical Score Points**

The scores referenced above shall be applied to weighted point values associated with each evaluated Submission response. The relative point value for each section of the Technical Proposal is as follows:

<b>Section</b>	<b>Title</b>	<b>% of Technical Score</b>
5.1	Executive Summary	5%
5.2	Account Team	15%
5.3.	Premium Rate Development	30%
5.4	GASB	30%
5.5	Ad Hoc Consulting Services	20%
<b>Total</b>		<b>100.0%</b>

**4. Technical Proposal Scoring**

The Technical Proposal evaluation will be based on 700 total available points. The average score of all evaluators for each section of the Technical Proposal will be applied against the weights depicted in the chart above.

### **7.3 Financial Proposal Evaluation**

The Financial Proposal of any Offeror meeting requirements set forth in Section 7.3 of this RFP will be evaluated by the Department.

#### **1. Financial Proposal Scoring**

- a. The Department will calculate a Total Projected Cost for each Offeror as the sum of (i); (ii), and (iii) as follows:
  - i. The Total Projected Premium Rate Development Cost as presented by the Offeror on the *Premium Rate Development and GASB Proposed Costs Form* (Attachment 16);
  - ii. The Total Projected GASB Cost as presented by the Offeror on the *Premium Rate Development and GASB Proposed Costs Form* (Attachment 16); and
  - iii. The Total Projected Ad hoc Consulting Services Cost which shall be calculated by the Department by multiplying the Offeror's proposed fixed hourly rates for each of the four listed position titles, as presented by the Offeror on the *Ad Hoc Consulting Services Cost Form* (Attachment 17), by the normalized hours for Ad Hoc Consulting Services as determined by the Department.
- b. The Offeror's Proposal with the lowest Total Projected Cost will be awarded 300 points. A Financial Proposal score for each remaining Offeror will be determined based on the following formula:

$$\begin{aligned} &\underline{\text{Cost Score of Evaluated Proposal}} = \\ &300 * \text{Lowest Evaluated Cost} \\ &\quad \text{divided by} \\ &\text{Total Cost of Proposal being evaluated} \end{aligned}$$

### **7.4 Total Combined Score of Technical and Cost**

The Total Combined Score assigned to each Offeror will be the sum of the Offeror's Technical Score and Financial Score.

## **7.5 Best Value Determination**

Best Value means that the proposal that optimizes quality, cost, and efficiency among responsive and responsible bidders shall be selected for award (State Finance Law, Article 11, Section 163). Best Value will be determined by a weighted point system, with 70 percent allocated to the Technical Proposal and 30 percent allocated to the Financial Proposal. The Department shall select and enter into negotiations for the purpose of executing a Contract with the responsive and responsible Offeror that has obtained the highest Total Combined Score, inclusive of both cost and technical. If two offers' Total Combined Scores are tied, the award shall go to the bidder with the highest cost score (lowest price), as calculated pursuant to Section 7.3 of this RFP.

## **SECTION 8: ADDITIONAL PROVISIONS**

The Offeror that is determined to provide the Best Value to the Department shall be notified of its conditional award of Contract subject to the successful development of a Contract. The resulting Contract shall incorporate the requirements set forth in the RFP. Additional terms and conditions not already addressed in the RFP are set forth below.

### **1. Work in The Continental United States of America**

All work performed by Contractor personnel under this Contract must be performed within the Continental United States of America.

### **2. Information Classification**

The Department has determined that the State information which the Contractor will either host, maintain, or have access to has an impact level of: Confidentiality = Moderate, Integrity = Moderate, and Availability = Moderate; and requires the Contractor, pursuant to IT Standard: Information Security Controls (NYS-S14-003) (see <https://its.ny.gov/document/information-security-controls>), to have the associated baseline security controls implemented to uniformly protect the confidentiality, integrity, and availability of the information entrusted to the Contractor.

### **3. Continued Data Access**

The Department has determined that the period of time that the Contractor must provide the Department continued access to Data beyond the expiration or termination of the Agreement is no less than 365 Calendar days. All Contract provisions related to the protection and security of the Data will survive termination of the Contract. This provision does not limit or lessen the time period or Contractor's obligations pursuant to *Standard Clauses for New York State Contracts* (Appendix A) to establish and maintain Records.

### **4. Use and Disclosure of Protected Health Information**

- a. The Offeror acknowledges that the Offeror is a "Business Associate" as that term is defined in the HIPAA implementing regulations at 45 CFR 160.103, of the Department as a consequence of the Offeror's provision of Project Services on behalf of the Department within the context of the Offeror's performance under the resulting Contract and that the Offeror's provision of Project Services will involve the disclosure to the Offeror of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Offeror's disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the resulting

Contract. As such, the Offeror, as a Business Associate, will be required to comply with the provisions of this Section.

- b. For purposes of this Section, the term “Protected Health Information” (PHI) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of the resulting Contract, PHI may be received by the Offeror from the Department or may be created or received by the Offeror on behalf of the Department in the Offeror’s capacity as a Business Associate. All PHI received or created by the Offeror in the Offeror’s capacity as a Business Associate and as a consequence of its performance under the resulting Contract is referred to herein collectively as “Department’s PHI”.
- c. The Offeror acknowledges that the Department administers on behalf of NYS, several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses the Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Offeror further acknowledges that the Department has designated NYSHIP and the Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Offeror further acknowledges that
  - i. The Offeror is a HIPAA “Business Associate” of the group health plans identified herein as “covered entities” as a consequence of the Offeror’s provision of certain services to and/or on behalf of the Department as administrator of the “covered entities” within the context of the Offeror’s performance under the resulting Contract, and that the Offeror’s provision of such services may involve the disclosure to the Offeror of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Offeror’s disclosure to the Department of individually identifiable health information as a consequence of the services performed under the resulting Contract; and
  - ii. Contactor is a “covered entity” under HIPAA in connection with its provision of certain services under the resulting Contract. To the extent Offeror acts as a HIPAA “Business Associate” of the group

health plans identified as “covered entities”, the Offeror shall adhere to the requirements as set forth herein. Offeror is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Offeror to perform the services hereunder and for the use and disclosure of information, including the Department’s PHI, as permitted under the resulting Contract.

- d. Permitted Uses and Disclosures of the Department’s PHI: The Offeror may create, receive, maintain, access, transmit, use, and/or disclose the Department’s PHI solely in accordance with the terms of the resulting Contract. In addition, the Offeror may use and/or disclose the Department’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Offeror may use and disclose the Department’s PHI for the proper management and administration of the Offeror if such use is necessary for the Offeror’s proper management and administration or to carry out the Offeror’s legal responsibilities, or if such disclosure is required by law or the Offeror obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Offeror of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, the Offeror may use and/or disclose the Department’s PHI, as appropriate:
  - i. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3) or (4); and
  - ii. To de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may, consistent with this section, be used and disclosed by Offeror only as agreed to in writing by the Department and permitted by law.
- e. Nondisclosure of the Department’s PHI: The Offeror shall not create, receive, maintain, access, transmit, use, or further disclose the Department’s PHI otherwise than as permitted or required by the resulting Contract or as otherwise required by law. The Offeror shall limit its uses and disclosures of PHI when practicable to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI’s access, use, or disclosure.
- f. Safeguards: The Offeror shall use appropriate, documented safeguards to prevent the use or disclosure of the Department’s PHI otherwise than as provided for in the resulting Contract. The Offeror shall maintain a



comprehensive written information security program that includes administrative, technical, and physical safeguards that satisfy the standards set forth in the HIPPA Security Rule at 45 CFR §§ 164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 CFR § 164.316, appropriate to the size and complexity of the Offeror's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, accesses, or that it transmits on behalf of the Department pursuant to the resulting Contract to the same extent that such electronic PHI would have to be safeguarded if created, received, maintained, accessed, or transmitted by a group health plan identified herein.

- g. Breach Notification: In addition to the Disclosure of Breach requirements specified in *Standard Clauses for All Department Contracts* (Appendix B), the following provisions shall apply:
  - i. Reporting: The Offeror shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by the resulting Contract, of which the Offeror becomes aware. An acquisition, access, transmission, use, or disclosure of the Department's PHI that is unsecured in a manner not permitted by HIPAA or the resulting Contract is presumed to be a breach unless the Offeror demonstrates that there is a low probability that Department's PHI has been compromised based on the Offeror's risk assessment of at least the following factors:
    - 1) The nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification;
    - 2) The unauthorized person who used Department's PHI or to whom the disclosure was made;
    - 3) Whether Department's PHI was actually acquired or viewed; and
    - 4) The extent to which the risk to Department's PHI has been mitigated.
  - ii. Required Information: In addition to the information required in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, the Offeror shall provide the following information to the Department within the time period identified in *Standard Clauses for All Department Contracts* (Appendix B),

Disclosure of Breach, except when, despite all reasonable efforts by the Offeror to obtain the information required, circumstances beyond the control of the Offeror necessitate additional time. Under such circumstances, the Offeror shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty Calendar Days from the date of discovery:

- 1) the date of the breach incident;
  - 2) the date of the discovery of the breach;
  - 3) a brief description of what happened;
  - 4) a description of the types of unsecured PHI that were involved;
  - 5) identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
  - 6) a brief description of what the Offeror is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
  - 7) any other details necessary to complete an assessment of the risk of harm to the individual.
- iii. The Offeror will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed as a result of a breach, as well as the Secretary of the United States Department of Health and Human Services and the media, as required by 45 CFR Part 164.
- iv. The Offeror shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
- v. The Offeror shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Offeror not permitted by the resulting Contract.

- h. Associate's Agents: The Offeror shall require all of its agents or Subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Offeror with respect to the Department's PHI under the resulting Contract.
- i. Availability of Information to the Department: The Offeror shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Offeror to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Offeror shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. The Offeror must provide the Department with access to the Department's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if the Department's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, the Offeror must provide the Department with access to the requested PHI in a readable electronic form and format.
- j. Amendment of the Department's PHI: The Offeror shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Offeror shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Offeror.
- k. Internal Practices: The Offeror shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- l. Termination: This Contract may be terminated by the Department at the Department's discretion if the Department determines that the Offeror, as

a Business Associate, has violated a material term of this Section. Data return and destruction upon contract termination is governed by *Information Security Requirements* (Appendix C).

- m. Indemnification: Notwithstanding the provisions in *Standard Clauses for All Department Contracts* (Appendix B), the Offeror agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents, or other members of its workforce (each of the foregoing hereinafter referred to as “Indemnified Party”) against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section, Use and Disclosure of Protected Health Information, or from any acts or omissions related to this section by the Offeror or its employees, officers, subcontractors, agents, or other members of its workforce, without limitations. Accordingly, the Offeror shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs, or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding, or demand by any third party which results from the Offeror’s acts or omissions hereunder. The Offeror’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract.
- n. Miscellaneous:
  - i. Survival: The respective rights and obligations of Business Associate and the “covered entities” identified herein under HIPAA and as set forth in this Section, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION, shall survive termination of the resulting Contract.
  - ii. Regulatory References: Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended, or modified, as of their respective compliance dates.
  - iii. Interpretation: Any ambiguity in the resulting Contract shall be resolved to permit covered entities to comply with HIPAA.

## **5. Entire Contract**

The resulting Contract, including all appendices, constitutes the entire Contract between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not

contained herein shall be binding or valid and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by both parties hereto, except as otherwise provided herein. The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by OSC and subject to the termination provisions contained herein.