



Department of
Civil Service

REQUEST FOR PROPOSALS

ENTITLED:

“New York State Health Insurance Program Banking Services”

RELEASE DATE:

February 23, 2021

PROPOSAL DUE DATE:

April 30, 2021

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

Lola W. Brabham
Commissioner
NYS Department of Civil Service

Dominique Choute
Director
Office of Financial Administration

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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 Proposal (RFP) to competitively secure the services of a qualified entity to provide banking services (hereinafter collectively referred to as Project Services) for the Department in its administration of the New York State Health Insurance Program (NYSHIP).

The required Project Services are set forth in detail in Section 3. These Project Services include maintaining two lockboxes and processing premium payments remitted by enrollees and agencies. This RFP defines minimum contract requirements, details response requirements, and outlines the Department's process for evaluating responses and selecting a qualified organization (Offeror).

The Department will only contract with a single Offeror, which will be the sole contact regarding all provisions of the Contract.

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

1.2 Period of Performance

The Contract will be for a term beginning August 1, 2021 and ending September 11, 2026, 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 the New York State Health Insurance Program

NYSHIP was established by the New York State Legislature in 1957 to provide essential health insurance protection to eligible New York State (NYS) employees, retirees, and their dependents. Public authorities, public benefit corporations, and other quasi-public entities, such as the NYS Thruway Authority and the Dormitory Authority, may choose to participate in NYSHIP; those that do are called Participating Employers (PEs). NYS Civil Service Law section 163 also allows local units of government such as school districts, municipal corporations, and special districts (examples include water districts, fire districts, and library districts) to participate in NYSHIP. Local government units that choose to participate in NYSHIP are called Participating Agencies (PAs). There are over nine hundred (900) PEs and PAs that participate in NYSHIP.

NYSHIP is sponsored by the Council on Employee Health Insurance (Council). The Council is composed of the President of the Civil Service Commission, the Director of the Governor's Office of Employee Relations (GOER), and the Director of the Division of the Budget (DOB).

NYSHIP is currently comprised of the following health insurance plans:

1. The Empire Plan provides health insurance benefits for the employees, retirees and eligible dependents of New York State; and NYSHIP PAs and PEs. It pays for covered hospital services, physicians' bills, prescription drugs, and other covered medical expenses. 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:
 - a. Hospital Program benefits, administered by Empire BlueCross, include coverage for hospital inpatient stays, hospice care, emergency care, skilled nursing facilities, and the Transplants Program.
 - b. 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).
 - c. Mental Health and Substance Abuse Program benefits, administered by Beacon Health Options, include coverage for network and non-network services.
 - d. Prescription Drug Program benefits, administered by CVS Caremark, include coverage for prescription drugs dispensed through retail network pharmacies, the Mail Service Pharmacy, and the Specialty Pharmacy Program.
2. The Excelsior Plan is a variation of the Empire Plan available to NYS local government units which 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.
3. HMOs are offered as an alternative to coverage under the Empire Plan. The NYSHIP HMO options are available to State employees and PEs. The Department requires that the HMO services offered be a community-based premium product, or a Center for Medicare and Medicaid Services (CMS)-approved Medicare Advantage Plan for Medicare-Primary Enrollees. The State currently offers 17 HMO options from 6 different insurers.

4. 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 abuse benefits, and prescription drug benefits. SEHP is administered by the Department's Employee Benefits Division (EBD).

1.4 Offeror Eligibility

Offeror means any responsible and eligible entity submitting a responsive Proposal to this RFP. It shall be understood that references in the RFP to "Offeror" shall include an entity's proposed Subcontractors or Affiliates (as defined in Section 4.3 of this RFP), if any. 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 NYS, 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 NYS with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: http://www.dos.ny.gov/corps/forms_listing.html. 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. The Offeror must be a commercial bank or trust company chartered under Article III of New York Banking Law, or a national bank. The Offeror must possess and the Contractor must maintain throughout the term of the Contract the authority to accept Deposits held in the name of the State of New York. Deposit is defined in this RFP as any transaction involving the transfer of monies to the banking institution for the payment of NYSHIP premiums.

5. The Offeror must be a member of the National Automated Clearing House Association (NACHA) and, upon request, provide supporting documentation of membership. The Offeror and any Subcontractor(s) must agree to conform to all NACHA Operating Rules (hereinafter, NACHA Rules).
6. The Offeror must be able to act as both an Originating Depository Financial Institution (ODFI) and a Receiving Depository Financial Institution (RDFI) – able to both initiate and receive Automated Clearing House (ACH) entries.
7. Sections 105 and 106 of the New York State Finance Law require financial institutions holding deposits of New York State monies to pledge collateral with the State to the extent deemed appropriate by the State. As required by such law, the Offeror must agree to pledge securities or to obtain a surety bond by companies with the highest ratings issued by nationally recognized statistical rating organizations to secure the State's interest in any depository account and any "pass-through" accounts to the extent deemed appropriate by the State. The State shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the New York State fiscal agent. The State reserves the right to periodically verify the amount of collateral held.
8. The Offeror must have a current long-term rating of C+ or better from at least two out of three rating agencies (S&P, Moody's and Fitch). The Department reserves the right to, if prior to contract execution, go to the next qualified highest proposer, in the event that the Offeror's rating falls below C+. To ensure uninterrupted services, the successful Offeror's continued financial stability shall be a condition of the resulting Contract. The Department reserves the right to terminate the Contract in the event that the successful Offeror's rating with any of the three rating agencies falls below C+.
9. At time of Contract execution, the Offeror must have on file with OSC, and the Contractor must maintain throughout the term of the Contract, a *State of New York Undertaking for Bank Deposits and Assignment of Securities* (Attachment 6).
- ~~10. The Offeror must establish and maintain a processing site(s) which must be located in the continental United States (CONUS). All data and confidential information must be processed, stored, and accessed exclusively within the CONUS.~~
11. 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 Section 3 of the RFP and it has maintained an organization capable of performing that portion of Project Services to be rendered by the Offeror in continuous operation for at least the past one (1) year. If the Contractor is

proposing the use of a Subcontractor or Affiliate, the Offeror must also represent and warrant that the Subcontractor or Affiliate has maintained an organization capable of performing that portion of Project Services to be rendered by the Subcontractor or Affiliate.

1.5 Timeline of Key Events

EVENT	DATE
RFP Release Date	February 23, 2021
Deadline for Submission of Offeror Affirmation of Understanding	See below*
Deadline for Submission of Offeror Questions	March 8, 2021
Release Date of Official Responses to Offeror Questions	March 22 , 2021
Proposal Due Date and Time	April 30 , 2021 3:00 PM
Anticipated Tentative Contract Award	June 7, 2021
Contract Start Date	August 1, 2021

*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 contact information 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 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.

Brian Bopp
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

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

- a. Pursuant to 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 (5) Business Days after the Release Date of Official Responses to Questions specified in Section 1.5 of this RFP. Business Day(s) means every Monday through Friday, from 9:00 a.m. to 5:00 p.m. ET, except for days designated as state holidays by the Department.
- 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
New York State Health Insurance Program
Banking 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 (20) 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* form (Attachment 1). Notice of any extension will also be posted to <https://www.cs.ny.gov/BankingServicesRFP/>.

5. Submission of Questions

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* form (Attachment 1), the *Questions Template* (Attachment 4). The questions and answers will also be posted to <https://www.cs.ny.gov/BankingServicesRFP/>.

6. Submission of Proposal

- a. The Offeror's Proposal must be organized and separated into (3) 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 (2) hard copy versions of each of the three (3) 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 four (4) additional USB drives, two (2) of which each contain an electronic copy of the Administrative and Technical Proposal ONLY, and two (2) of which contain the

Financial Proposal ONLY. The USB drives must conform to the technical specifications outlined in Section 2 of this RFP. Each of the 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 USB drives that contain the Financial Proposal should be packaged in the sealed box/envelope labeled Financial Proposal. The 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, 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;">New York State Department of Civil Service Request for Proposals "New York State Health Insurance Program Banking Services"</p> <p style="text-align: center;">OFFEROR NAME OFFEROR ADDRESS</p> <p style="text-align: center;">Indicate content, as applicable ADMINISTRATIVE, TECHNICAL, or FINANCIAL PROPOSAL There must be no Financial/cost information included in the Offeror's Administrative Proposal or Technical Proposal.</p>

- c. All Proposals must be mailed or hand-delivered to the address provided in Section 2(6)(b) of this RFP. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four (24) 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 Proposals is delivered by mail or courier, the Department recommends that it be sent "Returned 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.

7. 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), *Information Security Requirements* (Appendix C) and the *Glossary to Appendix B and C* (Appendix C-1). 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. 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, unless specifically required by the solicitation to be submitted as part of 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.
- 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.

8. 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.

9. 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.

10. Submission of a Protest

By participating in activities related to this procurement, and/or by submitting a Proposal in response to this solicitation, 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 ten (10) Business Days 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
New York State Health Insurance Program Banking Services”**

OR

**“Submission of Tentative Award Protest for
Request for Proposals
New York State Health Insurance Program Banking 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 Proposal, 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 (20) 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 non-responsiveness determination or the selection decision, the Department shall continue contract negotiations regarding the terms and conditions of the contract with the selected Offeror.

11. 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/BankingServicesRFP/>;

- 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;
- 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 (180) 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.

12. Disclaimer

The Department is not liable for any cost incurred by any Offeror prior to approval of the contract by OSC. Additionally, no cost 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 Contract start date or for an Offeror's performance of implementation activities. 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, 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 11). 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 Attachment 11 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 Attachment 11 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 be submitted in separate packaging from 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 Attachment 11 and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed Attachment 11 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 (3) 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 ~~using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher~~. 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 statements on the MacBride Fair Employment Principles and Non-Collusive Bidding Certification. It also sets forth the certifications regarding compliance with the Federal Americans with Disabilities Act, compliance with the NYS Public Officers Law, certification required under NYS Procurement Lobbying Law, certification required under Executive Order No. 177 and certification required by New York State Finance Law section 139-I regarding written sexual harassment policies.

4. New York Subcontractors and Suppliers

An Offeror is required to complete *New York State Subcontractors and Suppliers* (Attachment 12). 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.

SECTION 3: PROJECT SERVICES

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

- Maintaining two Lockboxes: one United States Postal Service (USPS) Lockbox for premium remittances received through the mail from enrollees and PE and PA agencies; and one Electronic Lockbox for enrollees and PE and PA agencies submitting premium payments through online banking and credit card accounts;
- Processing premium payments, which involves making daily bank Deposits, reporting individual remittance information on a daily basis, including the provision of specific Deposit information, and providing monthly bank statements; and
- Directly depositing the funds received in the Lockboxes into the State's main checking account by automatic transfer (sweep) on a daily basis.
- Making all Deposit information available in an Online Banking Portal.

3.1 Lockbox Services

Throughout the term of the Contract, the Offeror is responsible for all Lockbox Services for two Lockboxes. It is required that the Offeror process items within the timeframes indicated. However, it is understood that due to circumstances beyond the Offeror's control, a slight delay in processing transactions may occur and the Department expects these delays to be resolved as soon as possible. In those instances, the Offeror is required to notify the Department in writing, within 24 hours, of any such delay and take immediate steps to rectify and process receipts. Any determination of either delay or circumstance beyond the Offeror's control will be at the sole discretion of the Department.

1. Duties and Responsibilities

- a. Set up and maintain one (1) Electronic Lockbox or alternate receivable system for the Department, to enable enrollees and agencies to make direct payment by debit cards, credit cards, e-checks, and ACH through online banking accounts (collectively referred to as Electronic Payments);
- b. Secure and maintain one USPS Lockbox located near the Offeror's processing center. Offeror must maintain the PO Box and pay associated fees to USPS. This Lockbox shall be used to enable enrollees and agencies to make direct payments by check or money order;

- c. Process payments submitted with a remittance statement, which includes an Optical Character recognition (OCR) scanline. The font for the scanline is OCR-A, pitch 10 and height is 12;
- d. Utilize a lookup file submitted by the Department to the Contractor to process payments submitted without a remittance statement or with a remittance statement that is un-processable. The lookup file will be provided in Comma Separated Value (CSV) format and is described in *Lookup File Layout (Attachment 15)*;
- e. Utilize effective controls to ensure only a five digit numerical code, as assigned by the Department, is used for processing agency payments received by the Lockboxes;
- f. Provide ACH debit block services to prevent unauthorized, or fraudulent, debiting of the Department's account;
- g. Post all Deposits on the Business Day retrieved/received and make funds available within one Business Day of Deposit;
- h. Enable Enrollees **and agencies** to initiate credit card payments on Offeror-hosted web application ~~or Offeror-hosted Interactive Voice Response (IVR) application~~. **The Offeror must accept Master Card and Visa but is encouraged to accept payment by as many major credit cards as possible.** The Offeror must **also** maintain compliance with the Payment Card Industry Data Security Standards (PCI DSS) at all times. The Offeror may be asked to provide documentation annually to demonstrate PCI DSS compliance. In addition, the Offeror must ensure that the Department does not electronically receive any cardholder data in which the entire Primary Account Number (PAN) is readable. If the Offeror engages the services of a Subcontractor, the Offeror must ensure the Subcontractor also remains compliant, as applicable, and provide the appropriate documentation to demonstrate the Subcontractor's PCI DSS compliance;
- i. Work with the Department to establish a landing page on the Department's website so enrollees and agencies can access debit card and credit card payment services; and
- j. Deposit Guarantee: The Offeror must guarantee that all payments retrieved from the Lockboxes will be accurately posted to the correct account on the Business Day received. As determined in the Department's sole discretion, for each instance where the Offeror does not accurately post a payment to the correct account on the Business Day received, the Department may assess a penalty of \$500 against future payments.

3.2 Reporting

1. Duties and Responsibilities

The Offeror will be responsible for making all Deposit information available in an Online Banking Portal. Such information must:

- a. Be available in an Online Banking Portal within one Business Day of Deposit for designated Departmental staff to perform banking activities including, but not limited to: access to weekly statements; access to all transaction types; and access to all return check items. In this RFP, Online Banking Portal is defined as a vendor-provided secure website for Department staff to view and manage account information;
- b. Be available 24 hours a day, 7 days a week to individuals employed by the Department as well as individuals from other State agencies designated by the Department, except for scheduled maintenance;
- c. Make available accurate reports of payment transaction deposits as required by the Department for its use upon request in the review, management and analysis of the payment transactions. Detailed historical payment data must be made available for the life of the Contract plus one year.
- d. Provide access to ad hoc reports and other data analysis tools. These reports must have the ability to run for a single date or a range of dates.
- e. Supply standard reports in an electronic format including but not limited to Microsoft Access, Excel and/or a text file.
- f. Provide notification and detail of dishonored or returned payments after a second attempt has been made to present the transaction.
- h. Provide support and maintenance of the Online Banking Portal;
- i. Immediately notify the Department, in writing, of actual or anticipated events impacting Project delivery of services such as, but not limited to, legislation, litigation, and operational issues; and
- j. Make available Payment Detail Transaction Files for each of the Lockboxes. These files should be made available as follows:

- i. Electronically for the Department to retrieve from the Offeror using a secure internet connection daily, by midnight ET on the day of the Deposit.
 - ii. In the layouts described in the *Agency Transaction File Layout* (Attachment 16) and the *Enrollee Transaction File Layout* (Attachment 17).
- k. Maintain a HIPAA compliant level of security to protect the confidentiality of information on the Offeror's computer system and in the Offeror's physical work environment.
- l. Have a disaster recovery plan in place to reasonably ensure the continued delivery of Project Services in the case of an unforeseen event, including but not limited to a disaster or emergency.

3.3 Transition and Termination of Contract

1. Duties and Responsibilities

To ensure that the transition to a successor entity provides uninterrupted access, the transition process shall be governed as follows:

- a. The State may require the Offeror to provide uninterrupted Project Services after Contract termination/expiration as the State deems reasonable and necessary and/or as necessary for the State to comply with all legal requirements for establishing a new contract to continue the provision of Project Services (Transition Period);
- b. The Transition Period, **which shall not exceed 90 Calendar Days**, shall be determined by the State and the Offeror will be notified of the period in writing. The State shall consult with the Offeror prior to making such determination. ~~The State reserves the right to subsequently amend the Transition Period upon thirty Calendar Days advance written notice to the Offeror;~~ and
- c. At all times during the Transition Period and unless directed otherwise in writing by the State, the Offeror shall continue all contractual obligations set forth in this Contract, **related to activities that commenced before the end of the Contract**, until such time as an orderly transition to the State, a third party, or the successor Offeror has been completed pursuant to the approved Transition Plan. The Offeror shall be required to meet its contractual obligations pursuant to this paragraph notwithstanding the issuance of a termination for cause or convenience by the State.

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(7), Bid Deviations, the Offeror must accept the terms and conditions as set forth in this RFP, and *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), *Information Security Requirements* (Appendix C), and *Glossary for Appendix B & C* (Appendix C-1), and agree to enter into a Contract 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 13) 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. Subcontractors or Affiliates is defined as those contractors with whom the Offeror subcontracts to provide Project Services and incorporates as part of the Offeror's Project Management Team. For purposes of

reporting in the *Subcontractors or Affiliates* form (Attachment 9), Subcontractors include all vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from this RFP, as well as 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. For each Subcontractor identified, the Offeror must complete and submit the *Subcontractors or Affiliates* form 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. For the purpose of this RFP, Affiliate is defined as a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. On the *Subcontractors or Affiliates* (Attachment 9) form, the Offeror must:

1. Mark the applicable box in Attachment 9 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/vendors/index.htm>.

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 New York State 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 New York State 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 New York State 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. The Offeror should complete and return the certification forms within five (5) Business Days from the date of request (if the forms are not completed and returned with bid submission). 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. 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

4.6 Compliance with New York State Workers' Compensation Law

Sections 57 and 220 of the New York State Workers' Compensation Law (WCL) provide that the Department shall not enter into any Contract unless proof of workers' compensation and disability benefits insurance coverage is produced. Prior to entering into a Contract with the Department, the selected Offeror and Subcontractor(s) or

Affiliates, with more than \$100,000 in expected expenses over the life of the Contract, if any, will be required to verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms to be used to show compliance with the WCL are listed in *Compliance with NYS Workers' Compensation Law* (Attachment 10). Any questions relating to either workers' compensation or disability benefits coverage should be directed to the New York State Workers' Compensation Board, Bureau of Compliance at 518-486-6307. You may also find useful information on their website: <http://www.wcb.ny.gov>.

Submission of the proof of workers' compensation and disability benefits insurance coverage is required at the time of Proposal submission. Failure to provide verification of either of these types of insurance coverage with the Offeror's Administrative Proposal may be grounds for disqualification of an otherwise successful Proposal.

To the extent that the Offeror is proposing the use of Subcontractors or Affiliates, the Offeror must verify for the Department, on forms authorized by the New York State Workers' Compensation Board, the fact that the Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

4.7 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 4.7 should be licensed or authorized by the New York State Department of Financial Services 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.

An Offeror shall deliver to the Department evidence of the insurance required by this RFP and any Contract resulting from this RFP in a form satisfactory to the Department. 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 paragraph 12. Specific Coverages and Limits below.
 - 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 paragraph 11 below. 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.
- 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.

2. **Primary Coverage**

All 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 excess of and shall not contribute with the Offeror's insurance. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as generally 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.

3. **Breach for Lack of Proof of Coverage**

The failure to comply with the requirements of this Attachment 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.

4. **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.

5. **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 4.7(11), 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.

6. **Waiver of Subrogation**

For all liability policies (except Professional Liability and Data Breach/Cyber Liability), 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 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.

7. **Additional Insured**

The Offeror shall cause to be included in each of the liability policies (except Professional Liability and Data Breach/Cyber Liability) required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and CG 20 37 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 11 below. 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 Attachment had the Contractor obtained such insurance policies.

8. 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.

9. 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 (5) Business Days of receipt of any notice of cancellation or non-renewal 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.

10. 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.

11. 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:

- a. For certificates of insurance: 5 Business Days from request or renewal, whichever is later;
- b. For information on self-insurance or self-retention programs: 15 Calendar Days from request or renewal, whichever is later;
- c. For other requested documentation evidencing coverage: 15 Calendar Days from request or renewal, whichever is later;
- d. For additional insured and waiver of subrogation endorsements: 30 Calendar Days from request or renewal, whichever is later; and
- e. 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.

12. Specific Coverage and Limits

1. 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, products-completed operations, 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).

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 – \$2,000,000.00
- ii. General Aggregate – \$2,000,000.00
- iii. Products/Completed Operations – \$2,000,000.00
- iv. Personal Advertising Injury – \$1,000,000.00
- v. Medical Expense – \$5,000.00

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;
- v. Cross liability for additional insureds;
- vi. Products/completed operations for a term of no less than 1 year, commencing upon acceptance of the work, as required by the Contract;

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Department. Any other insurance maintained by the Department shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance, regardless of the “Other Insurance” clause contained in either party’s policy(ies) of insurance, if applicable.

2. Business Automobile Liability Insurance

The Offeror shall maintain Business Automobile Liability Insurance in the amount of at least \$1,000,000.00 each occurrence, covering liability

arising out of any automobile 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 \$1,000,000.00 each occurrence, for claims arising out of but not limited to 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.

- i. Such insurance shall include coverage of all professionals and technical personnel whose actions could be considered “professional services” arising out of the scope of services as additional named insureds.
- ii. If coverage is written on a claims-made policy, the Offeror 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 any Contract resulting from this Solicitation is completed. Written proof of this extended reporting period must be provided to the Department upon request.
- iii. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of any Contract resulting from this Solicitation.

d. Technology Errors & Omissions Insurance

The Offeror shall maintain, during the term of any Contract, Technology Errors and Omissions Insurance in the amount of at least \$2,000,000.00 each occurrence, for claims for damages arising from computer-related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. The policy shall include coverage for third party fidelity including cyber theft if coverage is not met in a Data Breach

and Privacy/Cyber Liability policy or a Fidelity/Employee Dishonesty policy.

If the policy is written on a claims-made basis, the Offeror must provide to the Department proof that the policy provides the option to purchase an Extended Reporting Period (tail coverage) providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

e. Data Breach/Privacy/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 \$10,000,000.00 each occurrence, 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. Cyber theft of customer's property, including but not limited to money and securities, unless coverage is provided under a Fidelity/Employee Dishonesty policy or bond (subject to verification by the State).

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 Lockbox Services

The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to develop Lockbox Services (both non-electronic and electronic) specified in Section 3.1 of this RFP, including the following:

- a. Describe the Offeror's capability to timely process and Deposit receipts for both the USPS and the Electronic Lockboxes.
- b. Describe the Offeror's standard banking procedures for determining the processability and non-processability of remittances including checks and money orders, including how the Offeror proposes to deal with non-processable payments. [Examples of processability issues include receipt of more than one remittance slip with a single payment, or payments received without a remittance slip.]
- c. Describe the Offeror's ability to block unauthorized ACH debits received.
- d. Describe the web application ~~or IVR process~~ through which payees will be able to initiate credit card and debit card payments.
- e. Describe the Offeror's disaster recovery plan, including how each aspect of services related to any Contract resulting from this RFP would be maintained in the case of an emergency situation affecting processing.
- f. Indicate which major credit cards the Offeror accepts as a form of payment.**

5.2 Reporting

1. The Offeror must provide a narrative describing in detail the proposed processes that will be utilized to develop Reporting specified in Section 3.2 of this RFP, including the following:

- a. Describe the reporting capabilities and functionality of the on-line portal and the online support that will be available for the Department to utilize the portal.
- b. Describe the Offeror's proposed processes/procedure to produce and verify the accuracy of reports and files.
- c. Describe how the Offeror will securely transfer data files to the Department.
- d. Describe the tools or resources that the Offeror proposes to assist the Department in reconciling payments credited to enrollee and agency accounts.
- e. Describe how information security will be maintained for operations outside of the continental United States (CONUS), including but not limited to:**
 - i. The site(s) for operations outside of CONUS; and**
 - ii. Any services performed outside of CONUS.**
- f. Explain the need to incorporate standard documents (such as bank documentations, Terms and Conditions Agreement, HIPPA Addendum, Deposit Agreement and Signature Card sample or Merchant Agreement) into the final contract. Samples of every document proposed for incorporation into the final contract must be submitted with the technical proposal.**

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. **All costs associated with the requirements of this RFP must be incorporated into the categories shown in the *Schedule of Fees* (Attachment 14). As such, the Offeror must build a per transaction fee structure to cover all fees incurred from any method of payment accepted by this RFP. No add-ons are permitted, nor may fees be passed through to payees.** 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.

Evaluations of Financial Proposals will be performed in accordance with the provisions presented in Section 7.3 of the RFP. The Financial Proposal must be kept separate from the Administrative and Technical Proposals.

The Financial Proposal must consist of a completed *Schedule of Fees* (Attachment 14) which will include fixed fees for each year of the five-year term of the Contract. All-inclusive costs associated with the delivery of Project Services in accordance with requirements of this RFP must be reflected on the *Schedule of Fees* (Attachment 14). No other add-on costs are permitted. Throughout the term of the Contract, the Offeror must charge only those monthly and transactional fees as quoted by the Offeror in the *Schedule of Fees* (Attachment 14). Transactional fees may only be charged based on the actual monthly volumes of transactions and will be reimbursed monthly based on items processed for the preceding month.

The Offeror will be reimbursed on a Direct Fee basis, whereby the monthly fee payment will be offset with Earnings Credits, defined as the:

Monthly Average Available Account Balance x ECR¹ x Number of Days in Month

divided by

365

¹ ECR (Earnings Credit Rate) = the monthly average investment rate on the 13-week Treasury Bill, as published on the US Treasury website

The Offeror must confirm the ECR each month with the Department. If, for any month, the Earnings Credits exceed the monthly fees, the Offeror must carry forward the excess to the following month.

In instances in which the monthly fee payment exceeds the Earnings Credits value (including excess credits carried forward from prior period), the Department will reimburse the Offeror the net difference of the monthly fee payment after application of the Earnings Credits.

Payment for Services by Direct Fee must be billed by the Offeror to the Department and will be paid in accordance with the procedures set forth in the Contract.

SECTION 7: EVALUATION AND SELECTION CRITERIA

The Department seeks to contract with a single Offeror to provide the Project Services. To this end, the Department intends to select the responsive and responsible Offeror whose Proposal offers the “Best Value”. Best Value will be determined by a weighted point system, with 60 percent allocated to the Technical Proposal and 40 percent allocated to the Financial Proposal.

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 13).

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, oral presentation(s) and/or site visits 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 5 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 0.

a. Excellent (5)

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

b. Meets Criteria (3)

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

c. Poor (0)

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. 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:

Section	Title	% of Technical Score
5.1	Lockbox Services	50%
5.2	Reporting	50%
Total		100%

3. Technical Proposal Scoring

The Technical Proposal evaluation will be based on 600 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 4 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 over the entire five year term of the Contract by computing the sum of the Offeror's proposed monthly fees plus the transactional fees, from the *Schedule of Fees* (Attachment 14), multiplied by the estimated annual utilization for each type of transaction. The table below includes information about average annual transactions.

Type of transaction	Average number of monthly transactions in 2019	Average dollar value of monthly transactions in 2019
Electronic Deposit ²	1,675	\$294,074
Non-Electronic Deposit ³	13,838	\$246,010,425
ACH Payments	25	\$244,388,175
Credit Card Payment ⁴	1,220	n/a
Debit Card Payment ⁴	1,220	n/a

- b. The Offeror’s Proposal with the lowest Total Projected Cost will be awarded 400 points. A Financial Proposal score for each remaining Offeror will be determined based on the following formula:

Cost Score of Evaluated Proposal =

400 * Lowest Evaluated Cost

divided by

Total Cost of Proposal being evaluated

7.4 Total Combined Score

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

The Department shall select and enter into negotiations for the purpose of executing a Contract with the responsive and responsible Offeror that has accumulated the highest Total Combined Score. If an Offeror’s Total Combined Score is equal to or less than one (1) point below the highest Total Combined Score, that Offeror’s proposal will be determined to be substantially equivalent to the Offeror holding the highest Total Combined Score.

² Currently the electronic lockback is mostly deposits from “bill pay” enrollees (payment directly from an enrollee’s bank account to the Department’s bank account) and ACH payments. It does not currently permit payment by credit cards, debit cards or e-checks. It is anticipated that this figure will increase with the introduction of additional electronic payment methods.

³ Checks and money orders only.

⁴ This will be a new payment method for the Department. Therefore, the monthly transactions are estimated based on enrollee demographics.

Among any Offeror proposals with the same or substantially equivalent Total Combined Scores, the Department shall select the Offeror with the highest Financial Proposal Score, as calculated pursuant to Section 7.3 of this RFP, to enter into negotiations for the purpose of executing a Contract.

SECTION 8: LEGAL TERMS AND CONDITIONS

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. ~~Intentionally omitted. 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. Entire Contract

This 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 the Office of the State Comptroller of the State of New York and subject to the termination provisions contained herein.

3. 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 New York State 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. 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 have or will be obtained from enrollees and or Members.
- 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 Section 4, below, 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 C.F.R §§164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 C.F.R. § 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 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: (i) the nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used Department's PHI or to whom the disclosure was made; (iii) whether Department's PHI was actually acquired or viewed; and (iv) the extent to which the risk to Department's PHI has been mitigated.

- ii. Required Information: In addition to the information required in Appendix B, Disclosure of Breach, the Offeror shall provide the following information to the Department within in the time period identified in 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 (30) 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 for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- l. Termination
 - i. 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. Date return and destruction upon contract termination is governed by Information Security Requirements, Appendix C.
- m. Indemnification: Notwithstanding the provisions in 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 Contract or from any acts or omissions related to this Contract 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. This section is not subject to the limitation of liability provisions of the 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.

4. Section 20 of *Standard Clauses for All Department Contracts (Appendix B)*, Contractor Staff, is deleted and replaced with a new section 20 as follows:

All Contractor Staff performing work under the Contract must: meet or exceed the technical and training qualifications set forth in the Contract; comply with all security and administrative requirements of the Department; possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the work will be provided or performed; and be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Project Services under the Contract on behalf of Contractor shall, in performing the Project Services, comply with all applicable Federal and State laws concerning employment in the United States.

Contractor Staff may be required to execute a Department Nondisclosure Agreement, either before or upon arrival at the work a State facility or, if in Department’s sole discretion, the Contractor’s Staff will otherwise have access to critical State Networks, equipment or data.

The Department, in its sole discretion, may refuse access to State systems and facilities or require removal from any State facility any Contractor Staff performing work under this Contract that the Department determines poses a security risk, has a work performance that the Department finds inadequate or unacceptable, or otherwise fails to meet the Department’s business requirements or expectations. Such action by the Department shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms.

For reasons of safety and public policy, the use of illegal drugs and/or alcoholic beverages by the Contractor Staff shall not be permitted while performing any phase of Contract work.

The State shall not be liable for any expense incurred by the Contractor Staff for any parking or towing fees or as a consequence of any traffic infraction or parking violations attributable to Contractor Staff.

- 5. Section 30 of *Standard Clauses for All Department Contracts* (Appendix B), Termination, is amended by adding a new paragraph III as follows:**

III. If the Contract is terminated pursuant to this section, the State shall remain liable for all accrued but unpaid charges incurred through the date of the termination.

- 6. Section 40 of *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, is deleted and replaced with a new section 40 as follows:**

Notwithstanding on any other provision of this Contract or requirements of law or regulation, the Contractor shall provide notice to the Department as soon as possible following the Contractor's discovery or reasonable belief that there has been unauthorized disclosure or loss of sensitive or Confidential Information ("Security Incident").

- a. Within two Business Days of the discovery or reasonable belief of a Security Incident, the Contractor shall provide a written report to the Department detailing the circumstances of the incident, which includes at a minimum:**
- i. A description of the nature of the Security Incident;**
 - ii. The type of Department information involved including the categories of data;**
 - iii. Who may have obtained the Department information;**
 - iv. What steps the Contractor has taken or shall take to investigate the Security Incident;**
 - v. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and**
 - vi. A point of contact for additional information.**

- b. Each day thereafter until the Contractor's investigation is complete or otherwise directed by the Department, the Contractor shall provide the Department with a written report regarding the status of the investigation and the following additional information as it becomes available:**
- i. Who is known or suspected to have gained unauthorized access to the Department's information;**
 - ii. Whether there is any knowledge if the Department information has been used in an unauthorized fashion or compromised;**
 - iii. What additional steps the Contractor has taken or shall take to investigate the Security Incident;**
 - iv. What steps the Contractor has taken or shall take to mitigate any negative effect of the Security Incident; and**
 - v. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.**
- c. Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.**
- d. The Contractor shall confer with the Department regarding the proper course for the investigation and risk mitigation. The Department reserves the right to conduct an independent investigation of any Security Incident, and should the Department choose to do so, the Contractor shall cooperate fully by making resources, personnel, and systems access available to the Department and the Department's authorized representative(s) who may include the New York State Chief Information Security Office.**
- e. Subject to review and approval of the Department, the Contractor shall, at its own cost, provide notice that satisfies the requirements of applicable law or regulation to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident as well as notice to any regulatory authority as required under the Contract or applicable law or regulation. If the Department, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to the Department by the Contractor. If the Contractor does not reimburse such costs within thirty (30) calendar days of the Department's**

written request, the Department shall have the right to collect such costs including as a set-off against moneys due the Contractor.

- f. The Department reserves the right to require the Contractor to provide commercially standard credit monitoring for any and all individuals affected by the data breach at the sole expense of the Contractor for a period not to exceed 12 months, which shall begin 30 days following the notice of offer from the Contractor of such credit monitoring to those affected individuals, which shall be within a reasonable time following the identification of such affected individuals. The Department reserves the right to require notice by regular or electronic mail.
7. Section 15 of *Information Security Requirements* (Appendix C), Offshore Security Requirement, is deleted and replaced with:

Intentionally omitted.