



Department of
Civil Service

INVITATION FOR BID

ENTITLED:

EMPLOYEE BENEFIT CARD

RELEASE DATE:

November 7, 2019

PROPOSAL DUE DATE:

December 30, 2019, 3:00 p.m. ET

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until the 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 IFB 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 IFB, Section 2: Procurement Protocol and Process).

Lola Brabham
Acting Commissioner
NYS Department of Civil Service

James DeWan
Director
Employee Benefits Division

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SECTION 1: INTRODUCTION

1.1 Purpose

The purpose of this Invitation for Bid (“IFB” or “Procurement”), entitled “Employee Benefits Card” is to competitively secure the services of a qualified organization, either directly or through subcontracts with qualified organizations, to perform the following services:

- Produce and distribute Employee Benefit Cards (“EBC”) on behalf of the New York State Department of Civil Service (“Department” or “DCS”) to individuals covered under The Empire Plan, the Student Employee Health Plan (“SEHP”) and the Excelsior Plan; and
- Create and distribute associated Management Reports to the Department to manage the contract.

This IFB and other relevant information may be reviewed at:

<https://www.cs.ny.gov/BenefitCards2019IFB/>.

1.2 Period of Performance

The Contract will be for a term consisting of a 60-day implementation period plus five (5) years (“Contract Term”), subject to the approval of the New York State Attorney General’s Office (“AG”) and the New York State Office of the State Comptroller (“OSC”).

1.3 Overview of the New York State Health Insurance Program

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 New York State (NYS) employees, retirees, and their eligible 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). Article XI of the NYS Civil Service Law also allows local units of government such as school districts, special districts, and municipal corporations to participate in NYSHIP; those local government units which choose to participate in NYSHIP are called Participating Agencies (PAs).

NYSHIP is sponsored by the Council on Employee Health Insurance (Council). The Council is comprised 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). The Department holds the contracts with the Program administrators.

NYSHIP consists of four health insurance plans:

1. The Empire Plan provides health insurance benefits for the employees, retirees and eligible dependents of NYS; and NYSHIP PAs and PEs. It pays for covered hospital services, physicians' bills, prescription drugs and other covered medical expenses. The Empire Plan, which became fully self-funded on January 1, 2014, has the highest level of enrollment with over a million covered lives of the approximate 1,241,000 NYSHIP enrollment. Presently, the Empire Plan benefit design contains four main components that are administered under separate contracts:
 - a. Hospital Program benefits, administered by Empire BlueCross BlueShield, include coverage for hospital inpatient stays, hospice care, emergency care, skilled nursing facilities, infertility services 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 Process, 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. It offers many of the same features of the Empire Plan with a higher degree of cost sharing between the employer and plan participants.
3. The NYSHIP Health Maintenance Organizations (HMOs) options are available to State employees and PEs.
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.

1.4 Overview of Required EBC Production, Distribution, and Reporting Services

The EBC, which will be produced and distributed by the selected Offeror on behalf of the Department, provides identifying information for an enrollee and any covered dependents enrolled in the Empire Plan, the SEHP or the Excelsior Plan. Once a week the Department produces an EBC Data File(s) containing all the information necessary to produce and distribute EBCs. Using the information contained in the EBC Data File(s), the selected Offeror will be required to produce and distribute the EBCs via first-class U.S. Postal Service to the cardholder.

Over the last four years of Empire Plan benefit card production, approximately 654,000 EBCs have been issued in the form of new, duplicate, and replacement cards, which equates to an average weekly production of approximately 3,100 cards. Over the last three years of SEHP and Excelsior Plan production, approximately 9,700 EBCs have been issued in the form of new, duplicate, and replacement cards, which equates to an average weekly production of approximately 60 cards. Additionally, approximately 4,800 SEHP cards are re-issued annually.

The selected Offeror will also be required to produce and distribute weekly Management Reports including Card Detail Reports, Card Summary Reports, Data Load Count Reports, and Address Change Reports. The Card Detail Report contains data supporting the EBCs produced for each enrollee and/or their dependent. The Card Summary Report contains total card counts and the total number of agencies that received EBCs. The Data Load Count Report contains the total number of received, rejected, and valid EBC packets and enrollment records. The Address Change Report provides a detailed summary of all enrollees and/or their dependents who experienced a change in mailing address maintained on file. All reports shall be transmitted to the Department through a secure electronic transmission that is compliant with the Health Insurance Portability and Accountability Act (HIPAA) and in a format that is searchable and acceptable to the Department.

1.5 Offeror Eligibility

Offeror means any responsible and eligible entity submitting a responsive Proposal to this IFB. It shall be understood that references in the IFB to "Offeror" shall include the proposer's Key Subcontractor or Affiliates (as defined in Section 4.3 of this IFB), 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 of this IFB),

then the Offeror must, at time of Proposal Due Date, have filed an application for authority to do business in NYS with the New York State Department 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 Department 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 IFB) and agree that it will, during the term of the Contract, comply with any requirements imposed upon it by law.
4. The Offeror must be capable of providing all the Project Services either directly or through the use of subcontractors.
5. The Offeror must represent and warrant that it possesses adequate staffing resources, financial resources and organizational structure to perform the type, magnitude and quality of work specified in the IFB.
6. The Offeror must have at least three years prior experience producing and distributing Employee Benefit Cards that are similar to those specified in the *Employee Benefit Card Specifications* (Attachment 20); and has produced a minimum of five-hundred thousand Employee Benefit Cards in a twelve-month period.
7. The Offeror must have at least two current or former clients, each with a card production size of at least fifty thousand (50,000) in a twelve-month period.

1.6 Timeline of Key Events

EVENT	DATE
IFB Release Date	November 7, 2019
Deadline for Submission of Offeror Affirmation of Understanding*	See below*
Deadline for Submission of Offeror Questions	December 16, 2019
Deadline for submission of MWBE Subcontractor/Supplier Posting Request Form	November 26, 2019
Release Date of Official Responses to Offeror Questions (Estimated)	December 23, 2019
Proposal Due Date and Time	December 30, 2019, 3:00 p.m. ET
Tentative Contract Award	January 21, 2020
Due date for Department's acceptance or issuance of a notice of deficiency about the MWBE Utilization Plan	January 29, 2020
Anticipated Contract Start Date	March 21, 2020**

*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 IFB.

**The March 21, 2020 contract start date allows for the 60-day implementation period. Production and Distribution of EBCs is anticipated to begin on May 21, 2020. However, if the contract start date goes beyond March 21, 2020, the awardee will have no more than 60 days to complete implementation.

SECTION 2: PROCUREMENT PROTOCOL AND PROCESS

2.1 Rules Governing Conduct of Competitive Procurement Process

All inquiries, questions, filings and Proposal submissions in regard to the IFB 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 includes and 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 four-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 IFB. 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 Lobbying 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/>

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. Interested MWBE Subcontractors/Suppliers

On the *MWBE Subcontractor/Supplier Posting Request Form* (Attachment 8), New York State certified Minority and Women-Owned Businesses (MWBE) may request that their firm's contact information be included on a list of MWBE firms interested in serving as a subcontractor or supplier for this Procurement. The listing will be publicly posted on the Procurement webpage at: <https://www.cs.ny.gov/BenefitCards2019IFB/> for reference by the bidding community. A firm requesting inclusion on this list should send a copy of its NYS MWBE certification with its completed MWBE Subcontract/Supplier Posting Request Form. This form must be received by the date listed in Section 1.6 Timeline of Key Events to be posted.

4. Submission of Errors or Omissions in this IFB Document

By participating in activities related to this IFB, and/or by submitting a Proposal in response to this IFB, 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 IFB, the Offeror may raise such issue as follows:

a. Process for Submitting Assertions of Errors or Omissions in IFB Document

- i. Time Frame: Assertions of errors or omissions in the IFB process which are or should have been apparent prior to the

Proposal Due Date must be received by the Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section 1.6 of this IFB. Business Day(s) means every Monday through Friday, from 9 a.m. to 5 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 IFB.

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

**"Submission of Errors or Omissions for the
EMPLOYEE BENEFIT CARD
Invitation for Bid"**

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 IFB

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. 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 IFB, the evaluation of Proposal, 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. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's 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 to act in the best interests of the State in resolving any assertion of error or omission in this IFB 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 which submitted an *Offeror Affirmation of Understanding and Agreement* (Attachment 1) via mail or e-mail. Notice of any extension will also be posted to:
<https://www.cs.ny.gov/BenefitCards2019IFB/>.

5. Submission of Questions

Using the *Questions Template* (Attachment 4), a prospective Offeror may submit questions concerning the content of this IFB via email to the Designated Contact's address specified in Section 2 of this IFB. Only those questions received prior to the Questions Due Date specified in Section 1.6 of this IFB, 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), or the *Questions Template* (Attachment 4). The questions and answers will also be posted to <https://www.cs.ny.gov/BenefitCards2019IFB/>.

6. Submission of Proposal

- a. The Offeror's submission must be organized and separated into three (3) parts: Administrative Proposal; Technical Proposal; and Financial Proposal. To facilitate the evaluation process, Offerors must follow the submission requirements described below:
 - i. One ORIGINAL hard copy and two (2) hard copy versions of each of the three (3) parts of the IFB, separated into Administrative, Technical and Financial sections.
 - ii. Each ORIGINAL hard copy of each part 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 part 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 parts 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 drives and must be clearly labeled by Proposal part 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 ORIGINAL hard copy parts of the Proposal are 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 above. Each of the four 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 two (2) USB drives that contain the Financial Proposal should be packaged in the sealed box/envelope labeled Financial Proposal. The two (2) 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 part, 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). There must be no cost information included in the Offeror's Administrative Proposal or Technical Proposal. Each sealed box/envelope should contain a label on the outside which contains the information below.

New York State Department of Civil Service
Invitation for Bid
“Employee Benefit Card”

OFFEROR NAME
OFFEROR ADDRESS

Indicate content, as applicable
ADMINISTRATIVE, TECHNICAL, or FINANCIAL PROPOSAL

- c. All Proposals must be mailed or hand-delivered to the address provided in Section 2 of this IFB. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact forty-eight (48) hours prior to delivery. The Department is located in a secure building and unscheduled visitors may be denied entry. All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section 1.6 of the IFB.
- d. Any Proposal received after 3:00 p.m. ET on the Proposal Due Date, as specified in Section 1.6 of this IFB, will not be accepted by the Department and may be returned to the Offeror 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 as an entirely new Administrative Proposal, Technical Proposal, or Financial Proposal (as applicable) in accordance with the format set forth in Section 2.1(6) of this IFB. All amendments will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.
- f. An Offeror is solely responsible for timely delivery of the Proposal to the Department prior to the stated Proposal Due Date stated in Section 1.6 of this IFB. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Proposal is delivered by mail or courier, the Department recommends that it be sent “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 IFB. 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). 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 bid deviations (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 12), as part of the Administrative Proposal, following the instructions on Attachment 12. If an Offeror's 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 12) 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 address provided in Section 2 of this IFB.

10. Submission of a Protest

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this IFB, 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 IFB.
- 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
Invitation for Bid
EMPLOYEE BENEFIT CARD”**

OR

**“Submission of Tentative Award Protest for
Invitation for Bid
EMPLOYEE BENEFIT CARD”**

- 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 IFB, 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 selection decision or a non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the contract with the selected Offeror.

11. Department of Civil Service Reservation of Rights

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

- a. Make or not make an award under the IFB, either in whole or in part;
- b. Prior to the bid opening, amend the IFB. If the Department elects to amend any part of this IFB, such amendments will also be posted to: <https://www.cs.ny.gov/BenefitCards2019IFB/>
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent IFB amendments;
- d. Withdraw this IFB, 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 IFB;
- 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 IFB;
- h. Reject any or all Proposals received in response to this IFB;
- i. Change any of the scheduled dates stated in this IFB;
- 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 IFB;
- o. Negotiate with the successful Offeror within the scope of this IFB 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 lowest Projected Cost to enter into negotiations for purposes of executing a contract. Prior to negotiating with the Offeror with the next lowest Projected Cost, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Costs 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 IFB, every offer is firm and not revocable for a minimum period of one hundred eighty (180) days from the Proposal Due Date as set forth in the IFB; and
- s. Any Offeror whose Proposal might become eligible for a tentative award in the event that the intended selection is disqualified may be asked to extend the time for which its Proposal shall remain valid.

12. Modification of Project Services

- a. In the event that laws or regulations enacted by the Federal or State government, ratified collective bargaining agreements with unions representing New York State employees or any other factor, as solely determined by the Department, have an impact upon the performance or requirements of the Project Services in such a manner that the Department determines that modifications of the Project Services are necessary, the Department shall notify the Offeror of the required modifications. Such written notice shall provide the Offeror with a reasonable time period to implement such revisions or modifications.
- b. To the extent that any of the modifications required under this section constitute a material and substantial change in the Project Services which the Offeror would be required to perform or deliver under the Agreement resulting from this IFB, either Party may submit a written request to the other Party to initiate review of the Project Services fee(s) and guarantees under the Agreement to address such modifications. All requests must be accompanied by appropriate documentation including justification for any modification in associated fees.

13. 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 associated with implementation related activities as set forth in Section 3 of this IFB. The Department has taken care in preparing the data accompanying this IFB (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 IFB 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 IFB, as well as the provisions of the *Standard Clauses for New York State Contracts* (Appendix A) and the *Standard Clauses for All Department Contracts* (Appendix B), 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 Proposals contain the submission required hereunder.

1. **Contractor Requirements and Procedures For Participation By New York State-Certified Minority And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the Department is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of the Department contracts.

a. Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Department hereby establishes an overall goal of 30 percent for MWBE participation: 10 percent for New York State-certified Minority-owned Business Enterprise (“MBE”) participation; and 20 percent for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor on any contract resulting from this procurement must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this IFB, the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this IFB pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Department will evaluate a Contractor’s “good faith efforts,” refer to Title 5 NYCRR § 142.8.

The Offeror understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in Title 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with Title 5 NYCRR § 142.13, the Offeror further acknowledges that if it is found to have willfully and intentionally failed to

comply with the MWBE participation goals set forth in a Contract resulting from this IFB, such finding constitutes a breach of contract and the Department may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or Proposal, an Offeror agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com> provided, however, that an Offeror may arrange to provide such evidence via a non-electronic method by contacting the Department.

Additionally, an Offeror will be required to submit the following documents and information as evidence of compliance with the foregoing:

- i. *A MWBE Utilization Plan* (Attachment 6) with their bid or Proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. The Department will review the submitted MWBE Utilization Plan and advise the Offeror of the Department's acceptance or issue a notice of deficiency within 30 days of receipt.
- ii. If a notice of deficiency is issued, the Offeror will be required to respond to the notice of deficiency within seven (7) Business Days of receipt by submitting to the Department a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the Offeror and direct the Offeror to submit, within five (5) Business Days, a request for a partial or total waiver of MWBE participation goals. Failure to file the *MWBE Waiver Request Form* (Attachment 7) in a timely manner may be grounds for disqualification of the bid or Proposal.

The Department may disqualify an Offeror as being non-responsive under the following circumstances:

- I. If an Offeror fails to submit a MWBE Utilization Plan;

- II. If an Offeror fails to submit a written remedy to a notice of deficiency;
- III. If an Offeror fails to submit a request for waiver; or
- IV. If the Department determines that the Offeror has failed to document good faith efforts to achieve the applicable MWBE participation goals.

The successful Offeror will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made prior to the submission of a request for final payment on the Contract.

The successful Offeror will be required to submit a *Quarterly MWBE Contractor Compliance Report* (Attachment 9) to the Department, by the 10th day following the end of each New York State fiscal quarter, over the term of the Contract, including documenting the progress made toward achievement of the MWBE goals of the Contract.

b. Equal Employment Opportunity Requirements

By submission of a bid or Proposal in response to this solicitation, the Offeror agrees with all of the terms and conditions of *Standard Clauses for New York State Contracts* (Appendix A) including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Offeror is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Offeror, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Offeror will be required to submit a *MWBE - Equal Employment Opportunity Policy Statement* (Attachment 10) to the Department with its bid or Proposal.

If awarded a Contract, the Offeror shall submit a Workforce Utilization Report and shall require each of its subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Department on a quarterly basis during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of age, race, creed (religion), color, national origin, sexual orientation, gender identification or expression, military status, sex, disability, predisposing genetic characteristic, familial status or marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law and Corrections Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

2. Participation Opportunities For New York State Certified Service-Disabled Veteran-Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that SDVOBs have opportunities for maximum feasible participation in the performance of the Department’s contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Offerors/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, the Department conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to a Contractor. Nevertheless, the Offeror/Contractor is encouraged to make good faith efforts to promote and assist in the participation

of SDVOBs on the Contract for the provision of services and materials. The directory of SDVOBs can be viewed at: <https://ogs.ny.gov/veterans/>.

The Offeror/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

3. 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 IFB 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. An Offeror may anticipate that a Proposal will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other New York State agencies interested in the provision of the subject services including, but not limited to, GOER and DOB, unless otherwise expressly indicated in this IFB. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this IFB.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested 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 16). 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 16 contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed Attachment 16 must be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (USB storage drive and Hard Copy), described below. It should not be included in the Offeror's Proposal. If the Offeror chooses not to assert that any Proposal material and/or supplemental submission

should be protected from FOIL disclosure, the Offeror should so advise the Department by checking the applicable box on Attachment 16 and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed Attachment 16 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 will not be considered part of the Offeror's Proposal and will not be reviewed as a part of the Procurement's evaluation process.

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 accordance with the instructions below, to be used in the event that its Proposal is the subject of a FOIL request received by the Department:

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 IFB 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 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. 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.

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.

4. New York State Required Certifications

An Offeror is required to submit the signed *New York State Required Certifications* (Attachment 11) 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 Procurement Lobbying Law, certification required under Executive Order No. 177 and certification required by New York State Finance Law section 139-l regarding written sexual harassment policies.

5. Public Officers Law

An Offeror and Offeror's 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. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this IFB and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the Procurement process, termination, suspension or cancellation 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 11), in the Offeror's Administrative Proposal.

6. Reciprocity and Sanctions Provisions

An Offeror is hereby notified that, if its principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services offered would be produced or performed substantially outside New York State, the Omnibus Procurement Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain. The list of jurisdictions subject to this provision is set forth in Article 21 of Appendix A.

7. Iran Divestment Act

By submitting a Proposal in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, Offeror (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerors

Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

8. New York Subcontractors and Suppliers

An Offeror is required to complete *New York State Subcontractors and Suppliers* (Attachment 17). 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 contract 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.

An Offeror is reminded that it must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the Contractor and its New York State business partners. New York State businesses will promote the Contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York State by its contractors. The State therefore expects Offerors to provide maximum assistance to New York State businesses in their use of the contract. The potential participation by all kinds of New York State businesses will deliver great value to the State and its taxpayers.

SECTION 3: PROJECT SERVICES

For purpose of submitting a Proposal, an Offeror must be capable of:

- Producing and distributing new, duplicate and replacement EBCs; and
- Creating and distributing Management Reports.

3.1 Materials, Processing and Prototype Specifications

The Offeror must comply with the following Materials Processing and Prototype Specifications:

1. The materials used in the production of EBCs, card carriers and envelopes shall meet the materials specifications set forth in *the Employee Benefit Card Specifications* (Attachment 20) of this IFB.
2. The Offeror may utilize any combination of offset, digital or flexographic methods for producing a durable EBC that meets the specifications of this IFB.
3. The layout of the EBC, card carrier and envelope shall meet the Prototype and Information Specifications set forth in *the Employee Benefit Card Specifications* (Attachment 20). A sample of the current EBC, card carrier, and envelope is set forth in the *Sample Empire Plan Employee Benefit Card and Card Carrier* (Attachment 21) and *Sample Employee Benefit Card Envelope* (Attachment 22).
4. A prototype of the Offeror's EBC, card carrier and envelope shall be submitted to the Department as part of the Offeror's Technical Proposal. The Department shall, in its sole discretion, determine if the Offeror's EBC, card carrier, and envelope meet the specifications set forth in the *Employee Benefit Card Specifications* (Attachment 20).
5. The Offeror shall be able to customize, modify, and produce new or modified EBC layouts and card carrier contents within sixty (60) days' prior notice at the written direction of the Department.
6. The Offeror's production process shall display the enrollee's name and up to five (5) dependents' names on the EBC (four (4) dependents' names for the Excelsior Plan) and attach up to four (4) EBCs (two (2) EBCs for the Excelsior Plan) with the same enrollee identification number onto a single card carrier addressed to the enrollee or dependent, as applicable and insert it in a single envelope that meets the specifications set forth in the *Employee Benefit Card Specifications* (Attachment 20) of this IFB. The Offeror must be capable of producing and distributing EBCs in all possible production scenarios as set forth in *Employee Benefit Cards Production Scenarios* (Attachment 30).

7. The Offeror shall pre-sort and mail the envelopes containing the EBC(s) and cards carriers through the U.S. Postal Service (USPS), first class to all enrollees and dependents who reside in the United States and Canada in a manner that ensures compliance with HIPAA requirements and with USPS technology that results in maximum postal discounts.
8. The Offeror should put appropriate controls in place to ensure:
 - a. No defective EBCs, card carriers or envelopes are mailed;
 - b. All EBCs are mailed to the correct cardholder(s); and
 - c. The Department is only invoiced for defective EBCs, card carriers or envelopes or any associated postage charges, produced or mailed by the Offeror that the Department directly caused to be defective.

For purposes of this section, an EBC, card carrier and/or envelope is defective if:

- i. The EBC, card carrier and/or envelope does not meet the specifications set forth in the Employee Benefit Card Specifications (Attachment 20) of the contract resulting from this IFB; or
 - ii. The EBC, card carrier and/or envelope does not meet the specifications as modified in writing by the Department; or
 - iii. After having been mailed, it is determined by the Department that the EBC(s) was not properly matched with its associated card carrier; or
 - iv. The cardholder information contained in the EBC Data File provided by the Department is not properly displayed on the EBC and/or card carrier.
9. The Offeror shall ensure that all Program materials including blank EBCs, card carriers and/or envelopes that contain the NYSHIP or NYS or logo pre-printed Program information are securely maintained and properly accounted for by the Offeror.
10. In the event of unforeseen emergency circumstances which affect the Offeror's ability to adhere to its production cycle, the Offeror shall immediately notify the Department and provide the following:
 - a. The circumstance(s) precluding production/delivery; and
 - b. A statement of whether or not succeeding production/deliveries will be affected and when the situation will be corrected.

The Offeror shall remain responsible for providing the associated EBCs and reports prior to the following week's production schedule.

3.2 Weekly Card Production and Distribution for New, Duplicate and Replacement EBCs

The Offeror must produce and distribute EBCs reflecting the data contained in the Department's weekly EBC Data File that comply with EBC specifications, the production cycle and the performance standards set forth in this Section 3 of the IFB. There shall be no required variation in the Offeror's standard production services and the distribution of new, duplicate and replacement EBCs.

The Offeror shall produce one EBC for enrollees with individual coverage and two EBCs for enrollees with family coverage who have five (5) or fewer dependents (four (4) or fewer dependents for enrollees of the Excelsior Plan). The Offeror shall produce additional EBCs for enrollees having six (6) or more dependents (five (5) or more dependents for enrollees of the Excelsior Plan). Each EBC shall list up to six (6) covered names (five (5) covered names for the Excelsior Plan).

The Department anticipates placing weekly card production orders but may request EBCs on a more frequent basis over the term of the contract at the costs proposed in Attachment 19. During each weekly production cycle, the Offeror shall complete all Project Services associated with the production and distribution of EBCs.

The Department will transmit to the Offeror a weekly computerized EBC Data File via secure transfer containing detailed benefit card data elements shown in the *Sample Empire Plan Card File Layout* (Attachment 28) and *Sample SEHP and Excelsior Card File Layout* (Attachment 29).

3.3 Management Reports

The Offeror must create and electronically distribute to the Department in a HIPAA-compliant manner, accurate weekly Card Detail, Card Summary Reports, Data Load Counts and Address Change Reports comparable to the *Sample Card Detail Report* (Attachment 23), *Sample Card Summary Report* (Attachment 24), *Sample Data Load Count Report* (Attachment 25) and *Sample Address Change Report* (Attachment 26). Each report must be provided to the Department within two (2) Business Days from the completion of each production cycle. The Department reserves the right to request reports be sent in paper and/or a searchable electronic format that is acceptable to the Department.

3.4 Re-issuance of EBCs

SEHP cards contain an expiration date and are re-issued annually to coincide with the start of a new academic year. Should the Department require a complete or partial re-

issuance of Empire Plan or Excelsior EBCs during the term of the contract, the Department and the Offeror shall mutually agree on the time-period needed for the Offeror to produce and distribute the EBCs and Management Reports. Routine weekly card production cycles will continue during the production cycle(s) for a complete or partial re-issuance.

3.5 Administration

The Offeror shall maintain an organization of sufficient size with staff that possess the necessary skills and experience to administer, manage and oversee all aspects of the contract resultant from this IFB during implementation, operation and transition.

The Offeror shall:

1. Establish and/or dedicate a team of qualified and experienced employees to the Department and maintain and adjust staffing patterns at appropriate levels to provide Project Services as required by the Department;
2. Provide timely responses (within one (1) to two (2) Business Days) to questions and requests posed by the Department;
3. Notify the Department in writing of changes in key personnel, key Subcontractor(s), or production facility locations specifically identified in its Bid. Substituted personnel, key Subcontractor(s) or production locations shall have comparable or better qualifications or facilities to those outlined in the Bid; and
4. The use and disclosure of personal health information by the Offeror will be subject to HIPAA requirements (see Appendix F).

3.6 Performance Guarantees and Credits

The Offeror shall contractually agree to the following performance guarantees and the corresponding credit amounts for failure to meet the guarantees.

1. Implementation and Start-Up Guarantee and Credit Amount

The Offeror guarantees that all implementation and start-up activities will be completed within a sixty (60) day implementation period after the contract start date so that the Offeror can assume full operational responsibility for the services required by this IFB for the production and distribution of EBCs, card carriers and envelopes and production of Management Reports.

If the Offeror fails to complete all implementation and start-up activities within the implementation period, the Offeror shall credit against the Project's fees one

thousand dollars (\$1,000) per Business Day that the Offeror fails to assume full operational responsibility to the satisfaction of the Department.

2. Production Cycle Guarantee and Credit Amount

The Offeror guarantees that each weekly production cycle shall be completed within the following time frames:

- a. For orders $\leq 10,000$ cards, within three (3) Business Days from the date that the EBC Data File is made available by the Department.
- b. For orders $> 10,000$ but $\leq 40,000$ cards, within four (4) Business Days from the date that the EBC Data File is made available by the Department.
- c. For orders $> 40,000$ cards, within the number of Business Days equal to the number of EBCs requested in the EBC Data File divided by 10,000, and then rounded up to the next whole number. **[FOR EXAMPLE:** If the Department requests 46,700 EBCs, the Offeror must produce the EBCs within 5 Business Days. $(46,700/10,000 = 4.67)$]

The Offeror shall credit against the Project's fees \$250 per Business Day, for each weekly production cycle that is not completed within the required timeframe as set forth in this section of the IFB.

3. Report Guarantee and Credit Amount

The Offeror guarantees that accurate Card Detail, Card Summary, Data Load Count and Address Change Reports shall be delivered to the Department weekly, within two (2) Business Days from the completion of each production cycle. The Offeror shall submit the *Sample Quarterly Performance Report* (Attachment 27) to the Department within fifteen (15) Business Days after the end of December, March, June, and September each year during the Contract Term.

The Offeror shall credit against the Project's fees \$250 per Business Day, for each Management Report not received within two (2) Business Days from the due dates specified above.

SECTION 4: ADMINISTRATIVE PROPOSAL

This section of the IFB 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 IFB. 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 IFB. Additional details pertaining to the required forms are found in Section 2 of this IFB.

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.

4.2 Offeror Attestation Form

The Offeror must complete and submit an executed copy of the *Offeror Attestations Form* (Attachment 15) demonstrating that it meets or exceeds the criteria for eligibility to bid as set forth in Section 1 of this IFB. A person legally authorized to represent the Offeror must execute this document.

4.3 Key Subcontractors or Affiliates

The Offeror must complete the *Key Subcontractors or Affiliates* form (Attachment 13) to identify and detail all Key Subcontractors or Affiliates. Key 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 each Key Subcontractor or Affiliate identified, the Offeror must complete and submit the *Key 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 Key Subcontractor or Affiliate for services to be provided by such subcontractor or Affiliate relating to the IFB. For the purpose of this IFB, 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. If an Offeror proposes to include the services of a Key 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.

4.4 New York State Standard Vendor Responsibility Questionnaire

The Offeror must file the New York State Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the OSC website at <https://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Offeror is proposing the use of Key Subcontractors or Affiliates, the Offeror must submit a completed questionnaire for each Key Subcontractor expected to receive more than \$100,000 in payments during the terms of the Contract. 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 be relying upon 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 Offerors' 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 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 Consultant Disclosure Requirement

The Offeror must complete the *New York State Consultant Services Contractor's Planned Employment* form (Attachment 14) for all employees proposed to provide Project Services under the Contract whether employed by the Offeror or a Subcontractor. Chapter 10 of the Laws of 2006 requires State contractors to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked, and the amount paid to the contractor by the State as compensation for work performed by those employees. The law defines contracts for consulting services to include any contract entered into by a State agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.

Further, the selected Offeror will be required to report annually to the Department and OSC the employment information described above, including work performed by subcontractors.

4.7 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 Key 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 18). 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 at 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 Key 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 Key Subcontractors or Affiliates are properly insured or are otherwise in compliance with the insurance provisions of the WCL.

4.8 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 this contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the NYS Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" or better or as acceptable to the Department. The Department may, at its sole discretion, only when coverage cannot be secured from an authorized carrier, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Department to accept insurance placed with a non-authorized carrier under any circumstances. The Offeror shall deliver to the Department evidence of such policies in a form acceptable to the Department. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

1. General Conditions

- a. Conditions Applicable to Insurance: All policies of insurance required by this contract must meet 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 6. Specific Coverages and Limits below.
 - ii. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in writing by the Department, policies must be written on an occurrence basis. Under certain circumstances, the Department may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is

cancelled or not renewed during that time, the selected Offeror must purchase, at its sole expense, Discovery Clause or “Tail” coverage sufficient to cover the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Department prior to the policy’s expiration or cancellation.

- iii. Certificates of Insurance/Notices. The selected Offeror shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Department, before commencing any work under this contract. Certificates shall reference the contract number. Certificates shall be sent to:

Brian Bopp
New York State Department of Civil Service
Attn: Office of Financial Administration, Floor 17
Agency Building 1, Empire State Plaza
Albany, NY 12239
DCSprocurement@cs.ny.gov

- iv. Unless otherwise agreed upon, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior, written notice except for non-payment, in which case notice shall be provided as required in (iii) above.
- v. In addition, if required by the Department, the Offeror shall deliver to the Department within forty-five (45) days of such request a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

b. Certificates of Insurance shall:

- i. Be in the form approved by the Department;
- ii. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to;
- iii. Indicate the policy that materially changes the coverage required by the contract;
- iv. Specify the Additional Insureds and Named Insureds as required herein;

- v. Refer to this contract by number and any other attachments on the face of the certificate;
 - vi. Be accompanied by a completed ELANY Affidavit when coverage is provided by a non-admitted carrier; and
 - vii. Be signed by an authorized representative of the insurance carrier or producer.
- c. Only original documents (Certificates of Insurance and other attachments) will be accepted. The Department will accept electronic forms as original documents when the document can be directly traced back to the insurance carrier, agent, or broker via e-mail distribution or similar means.

2. **Primary Coverage**

The liability and protective liability insurance policies shall provide primary and non-contributory coverage to the Department for any claim arising from the selected Offeror's Work under this contract, or as a result of the selected Offeror's activities. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f in the Insurance Services Office, Inc. (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 employer's 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. Insured Contract is defined to mean that part of any other contract or agreement pertaining to the selected Offeror's business (including an indemnification of a municipality in connection with work performed for a municipality) under which the selected Offeror assumes the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

3. **Policy Renewal/Expiration**

At least two weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the Department than the expiring policies shall be delivered to the Department in the manner required for service of notice in Paragraph (1)(a)(iii). Certificates of Insurance/Notices above. If, at any time during the term of this contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the contract or proof thereof is not provided to the Department, the Contractor shall immediately cease work under the contract. The Contractor shall not resume work under the contract until authorized to do so by the Department. Any delay, time lost, or additional cost

incurred as a result of the Contractor not having insurance required by the contract or not providing proof of the same in a form acceptable to the Department, shall not give rise to a delay claim or any other claim against the Department. Should the Contractor fail to provide or maintain any insurance required by this contract, or proof thereof is not provided to the Department, the Department may withhold further contract payments, treat such failure as a breach or default of the contract, and/or, after providing written notice to the Contractor, require the surety, if any, to secure appropriate coverage and/or purchase insurance complying with the contract and charge back such purchase to the Contractor.

4. **Self-Insured Retention/Deductibles**

Certificates must indicate deductibles or self-insured retentions above \$100,000, which are subject to approval from the Department. Additional surety/security may be required in certain circumstances. The selected Offeror shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

5. **Subcontractors**

Should the selected Offeror engage a Subcontractor, the selected Offeror shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Upon request, proof thereof shall be supplied to the Department.

6. **Specific Coverage and Limits**

a. Commercial General Liability

Commercial General Liability Insurance (CGL) covering the liability of the Offeror for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this contract, using a Commercial General Liability Insurance form (CG 00 01 12 07) or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:

- i. Each Occurrence limit – \$1,000,000
- ii. General Aggregate – \$2,000,000
- iii. Products/Completed Operations – \$2,000,000
- iv. Personal Advertising Injury – \$1,000,000

- v. Damage to Rented Premises – \$50,000
- vi. Medical Expense – \$5,000

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

- i. Premises liability;
- ii. Independent contractors/subcontractors;
- iii. Blanket contractual liability, including tort liability of another assumed in a contract;
- iv. Defense and/or indemnification obligations, including obligations assumed under this contract;
- v. Cross liability for additional insureds;
- vi. Products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract;
- vii. Explosion, collapse, and underground hazards;
- viii. Contractor means and methods; and
- ix. Liability resulting from Section 240 or Section 241 of the New York State Labor Law, if applicable.

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.

b. Professional Liability

The Contractor and any subcontractor retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of this contract, Professional Liability Insurance in the amount of \$1,000,000 issued to and covering damage for liability imposed on the Contractor by this contract or law arising out of any

negligent act, error, or omission in the rendering of or failure to render professional services required by this contract. The professional liability insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed. If applicable, the Contractor shall provide coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

c. Data Breach/Cyber Liability Including Technology Errors and Omissions

The Contractor shall carry and maintain Data Breach/Cyber Liability coverage in the amount of at least \$1,000,000. If the Contractor provides technology services or products, the Contractor must also provide Technology Errors & Omissions Coverage. As this insurance is most often written on a claims-made basis the Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after the work is completed if coverage is cancelled or not renewed.

SECTION 5: TECHNICAL PROPOSAL REQUIREMENTS

The purpose of Section 5 of this IFB is to set forth the Technical Proposal 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 IFB. An Offeror must not include any cost information in the Technical Proposal, including attachments.

5.1 Executive Summary

The Offeror must submit an Executive Summary that includes:

1. The name and address of the Offeror's main and branch offices, the location of the Offeror's proposed production site(s) for Project Services described in Section 3, and the name of the senior officer who will be responsible for this account; and
2. A detailed list of client organizations with the number of cards produced for each client to clearly demonstrate that the Offeror and/or its Key Subcontractor or Affiliate meets the minimum requirement of at least 500,000 cards.
3. The Offeror must identify at least two current or former clients, each with a card production size of at least fifty thousand (50,000) produced in a 12-month period.

5.2 Materials, Processing and Prototype Specifications

1. The Offeror must submit a prototype of the EBC, card carriers and envelopes following the specifications stated in Section 3.1 of this IFB and *Employee Benefit Card Specifications* (Attachment 20).

SECTION 6: FINANCIAL PROPOSAL

The Offeror's Financial Proposal must contain a completed *Price Quotation Form* (Attachment 19) which will include fees for each year of the five-year term of the Contract for EBCs, card carriers and envelopes for the Empire Plan (one set of quotes) and for the SEHP and Excelsior Plan (a second set of price quotes). Separate quotes are required for the Empire Plan (one set) and for the SEHP and Excelsior Plan (second set) to reflect the variance in cost of the different materials used in production of the EBCs. The Empire Plan is a card that is glued to the card carrier, whereas the SEHP and Excelsior Plan cards are perforated cards that require manual separation from the card carrier.

1. The Financial Proposal must be based upon the assumptions and the instructions as set forth below.
2. The EBC fee and Card Carrier and Envelope fees for the Empire Plan and for the SEHP and Excelsior plans quoted by the Offeror represent the charges to the Department to cover all Project Services required of the Offeror, with the exception of USPS charges which will be reimbursed on a pass-through basis.
3. The Offeror is bound by its quoted EBC fee(s) and Card Carrier and Envelope fee(s), as proposed in the Offeror's Financial Proposal for the entire term of the contract, unless amended in writing by the Parties.
4. The Offeror shall bill the Department for actual postage costs, using the best U.S. Postal discounts available for mailing EBCs and/or card carriers and envelopes that meet the specifications set forth in this IFB.
5. The Offeror shall invoice the Department, monthly in arrears, for all Project Services rendered during the preceding month, together with full supporting detail(s) to the Department's reasonable satisfaction and in a format required by the Department. Such invoices shall include, at a minimum, the quantity, unit price, and total amount due for EBCs, card carriers and envelopes, and total amount due for EBCs. The Offeror must separately invoice the Department for all USPS charges as well, including, but not limited to, USPS postage upgrades for 1st Class International mail, postage upgrades for disqualified mailing addresses, and USPS postage rate increases.

SECTION 7: EVALUATION AND SELECTION CRITERIA

The Department intends to award one contract to a responsive and responsible Offeror whose Proposal offers the lowest cost to the Department and the State based on the following.

7.1 Administrative Proposal Evaluation

Proposals determined by the Department to satisfy the submission requirements set forth in Section 4 of this IFB will be evaluated by an evaluation team composed of staff from the Department. An Offeror's Proposal shall be removed from the evaluation process and not be considered for award if the Offeror does not submit a *Formal Offer Letter* (Attachment 3) and an *Offeror Attestations Form* (Attachment 15) or should it be determined that the Offeror did not satisfy the requirements specified in Section 4 of this IFB, despite any attestation made regarding the requirements. If the Offeror's Proposal meets these requirements, it will be advanced for Technical Proposal evaluation.

7.2 Technical Proposal Evaluation

The Technical Proposal will be evaluated by the Department to ensure the Offeror has the capacity and capability to administer EBC Project Services. An Offeror's Proposal shall be removed from the evaluation process and not be considered for award if the Offeror fails to meet each of the following requirements:

1. Executive Summary

The Offeror's Executive Summary will be evaluated to ensure it includes:

- a. The name and address of the Offeror's main and branch offices, the location of the Offeror's proposed production site(s) for Project Services described in Section 3 of this IFB, and the name of the senior officer who will be responsible for this account;
- b. A detailed listing of client organizations with the number of cards produced for each client to clearly demonstrate that the Offeror and/or its Key Subcontractor or Affiliate meets the minimum requirement of at least 500,000 cards; and
- c. The name of at least two current or former clients, each with a card production size of at least fifty thousand (50,000) produced in a 12-month period.

2. Materials, Processing and Prototype Specifications

The Offerors' submitted prototypes of the EBC, card carriers and envelopes will be evaluated to ensure that these meet the specifications as detailed in the *Employee Benefit Card Specifications* (Attachment 20).

If the Offeror's Technical Proposal meets these requirements, it will be advanced for Financial Proposal evaluation.

7.3 Financial Proposal Evaluation

The Financial Proposal will be evaluated by the Department to determine the Offeror's Total Projected Cost for EBCs and Card Carriers and Envelopes over the entire five (5) year term of the Contract.

	Estimated Yearly Utilization	
	Empire Plan	SEHP* and Excelsior Plan
EBC	164,000	8,000
Card Carrier and Envelope (Packet)	103,000	8,000

*Includes annual re-issuance of approximately 4,800 SEHP EBCs and Packets. Note that Empire Plan and Excelsior cards are not re-issued annually.

1. Empire Plan Projected Cost

The Empire Plan Projected Cost for each Offeror will be calculated based on the sum of the following:

- a. Offeror's proposed fee per EBC for the Empire Plan from Attachment 19 for each year of the contract multiplied by 164,000 EBCs per year; and
- b. Offeror's proposed fee per packet of Card Carrier and Envelope for the Empire Plan from Attachment 19 for each year of the contract multiplied by 103,000 Packets per year.

2. SEHP and Excelsior Plan Projected Cost

The SEHP and Excelsior Plan Projected Cost for each Offeror will be calculated based on the sum of the following:

- a. Offeror's proposed fee per EBC for the SEHP and Excelsior Plan from Attachment 19 for each year of the contract multiplied by 8,000 EBCs per year; and
- b. Offeror's proposed fee per packet of Card Carrier and Envelope for the SEHP and Excelsior Plan from Attachment 19 for each year of the

contract multiplied by **8,000** Packets per year.

3. Total Projected Cost

The Total Projected Cost for each Offeror will be the sum of the Empire Plan Projected Cost and the SEHP and Excelsior Plan Projected Cost.

7.4 Award Determination

The responsive and responsible Offeror with the lowest Total Projected Cost shall be tentatively awarded this contract. The Department shall enter into negotiations for the purpose of executing a contract with the Offeror.

Among any Offeror proposals with the same Projected Cost, the Department shall select the Offeror with the lowest Projected Cost for Year 1 of the Contract Term, as calculated pursuant to Section 7.3 of this RFP, for the tentative contract award and to enter into contract negotiations.

SECTION 8: LEGAL TERMS AND CONDITIONS

The responsive and responsible Offeror that is determined to provide the lowest cost to the Department shall be notified of its tentative award of contract subject to the successful development of a contract. The resulting contract shall incorporate the requirements set forth in the IFB. Additional terms and conditions not already addressed in the IFB are set forth below.

1. The Offeror acknowledges and agrees that, pursuant to State Finance Law Section 163(10)(e), the Department may authorize and approve purchases from the resulting contract to other New York State agencies, the United State government or any other state, under appropriate circumstances. This process is commonly referred to as “piggybacking.”
2. Appendix B Changes:
 - a. Section 10 of Appendix B, Indemnification, is deleted and replaced with a new section 10 as follows:

10. INDEMNIFICATION

Without limitation, the Contractor agrees to indemnify, defend and save harmless the Department, the State, its officers, agents and employees, for any claims or losses the Department, the State or any individuals may suffer when such claims or losses result from the claims of any person or organization for any and all injuries or damages caused by the negligent acts or omissions of the Contractor, its officers, employees, agents, consultants and/or sub-contractors in performance of the contract. Furthermore, without limitation, the Contractor agrees to indemnify, defend and save harmless the Department and the State, its officers, agents, and employees from any and all claims or losses caused by the acts or omissions of any and all contractors, sub-contractors, consultants and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of the contract and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of the contract, and against any loss, damages or actions, including, but not limited to, costs and expenses, for violation of proprietary rights, copyrights, patents, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any material, information or data furnished under the contract, or based on any libelous or otherwise unlawful matter contained in such material, information or data, except as otherwise provided in the Article entitled "Patent Copyright or Proprietary Rights Infringement" of this Appendix B.

The Contractor also shall provide indemnification against all losses, and/or cost expenses (including reasonable counsel fees) that may be incurred by reason of the Contractor's breach of any term, provision, covenant, warranty, or representation contained herein and/or in connection with the enforcement of the contract or any provision hereof.

The Department does not agree to any indemnification provisions in any documents attached hereto that require the Department or the State of New York to indemnify or save harmless the Contractor or third parties.

Notwithstanding anything to the contrary in the contract, neither the Department nor the Contractor shall be liable to the other for any special, consequential, or punitive damages, or loss of profits or revenues, whether such damages are alleged as a result of tort (including strict liability), contract, warranty, or otherwise, arising out of or relating to either Party's acts or omissions under the contract.

For all claims against the Contractor where liability is not otherwise set forth in the contract as being "without limitation" and regardless of the basis on which the claim is made, Contractor's liability under the contract for direct damages shall be the greater of the following: (i) five hundred thousand dollars (\$500,000); (ii) two times the projected cost of the contract, or parts thereof forming the basis of the claim (said amount not to exceed a total of twelve (12) months charges payable under the Contract); or (iii) two times the total amount the Contractor was reimbursed under the contract in the preceding 12 months.

- b. Section 11 of Appendix B, Patent, Copyright or Proprietary Rights Infringement, is deleted and replaced with a new section 11 as follows:

11. Patent, Copyright or Proprietary Rights Infringement

The Contractor, solely at its expense and without limitation, shall defend any claim or suit which may be brought against the Department or the State for the infringement of United States patents, copyrights or proprietary rights arising from the Contractor's or the Department's use of any software, equipment, data, materials and/or information of any kind prepared, developed or furnished by the Contractor in connection with performance of the contract and, in any such suit, shall satisfy any final judgment for such infringement. The Department shall give the Contractor written notice for such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.

If principles of governmental or public law are involved, the State of New York may participate in the defense of any action identified under this

Article, but no costs or expenses shall be incurred upon the account of the Contractor without the Contractor's written consent.

If, in the Contractor's opinion, any software, equipment, data, materials and/or information prepared, developed or furnished by the Contractor is likely to or does become the subject of a claim of infringement of a United States patent, copyright or proprietary right, then, without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Department's prior written approval, substitute other equally suitable software, equipment, materials, data and/or information. In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any software, equipment, materials and/or information under the contract infringes on any patent, copyright, or proprietary right, such action shall be forwarded by the Department to the Contractor for defense and indemnification under this Article and to the Office of the Attorney General of the State of New York together with a copy of the contract. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the defense and indemnification set forth herein, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York, in writing, and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of the contract. The Contractor shall in such event protect the interests of the State of New York and shall take the steps necessary to secure a continuance to permit the State of New York to appear and defend its interest in cooperation with the Contractor, as is appropriate, including any jurisdictional defenses which the State shall have.

- c. Section 29 of Appendix B, Information Security Requirements, is deleted and replaced with a new section 29 as follows:

29. Information Security Requirements

In accordance with the Information Security Breach and Notification Act (ISBNA) (General Business Law §889-aa, State Technology Law §208), Contractor shall be responsible for complying with provisions of the ISBNA and the following terms contained herein with respect to any private information (as defined in ISBNA) received by Contractor under the contract (Private Information) that is within the control of the Contractor either on the Department's information security systems or the Contractor's information security system (System). In the event of a breach of the security of the System (as defined by ISBNA), Contractor shall immediately commence an investigation, in cooperation with the Department, to determine the scope of the breach and restore security of

the System to prevent any further breaches. Contractor shall also notify the Department of any breach of the security of the System immediately following discovery of such breach.

Except as otherwise instructed by the Department, Contractor shall, to the fullest extent possible, first consult with and receive authorization from the Department prior to notifying any individuals, the State Office of Technology Services (ITS), the State Consumer Protection Board and the Office of the Attorney General (OAG) or any consumer reporting agencies of a breach of the security of the System or concerning any determination to delay notification due to law enforcement investigations. Contractor shall be responsible for providing the notice to all such required recipients and for all the costs associated with providing such notice. Contractor shall be liable for any other costs associated with noncompliance of ISBNA if caused by the Contractor or Contractor's agents, officers, employees, or subcontractors. Nothing herein shall in any way impair the authority of the OAG to bring an action against the Contractor to enforce the provisions of ISBNA or limit Contractor's liability for any violation of the ISBNA. Additional information relative to the law and the notification process is available at: <https://its.ny.gov/eiso>

Contemporaneous with the execution of the contract, the Contractor and its designees shall execute the Department's Third Party Connection and Data Exchange Agreement and any other protocol required by the Department, and shall ensure its employees, agents and designees complete the related Third Party Acceptable Use Policy and Agreement if applicable, to ensure the security of data transmissions and other information related to the administration of the contract. This request may be waived by the Department in its sole discretion.

- d. Section 37 of Appendix B, Consultant Disclosure Requirements, is deleted and replaced with a new section 37 as follows:

37. Consultant Disclosure Requirements

Intentionally Omitted

3. Work in The United States

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

4. Entire Agreement

This contract, including all appendices, constitutes the entire agreement between the parties thereto 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.

5. Contractor Responsibility for Subcontractors

The following requirements shall supplement the requirements of Appendix B. The Contractor shall not in any way be relieved of any responsibility under the Contract by any subcontract. The Contractor shall be solely responsible to the Department for the acts or defaults of its Subcontractor(s) and of such Subcontractors' officers, agents, and employees, each of whom shall for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract. Any Deliverable provided or furnished by a Subcontractor shall be deemed for purposes of the contract to be provided or furnished by the Contractor. The Contractor shall inform each Subcontractor fully and completely of all provisions and requirements of the contract, including: a. those relating either directly or indirectly to the Deliverables to be provided and the materials to be furnished or Services provided pursuant to its respective subcontract, b. to maintain and protect against any unauthorized disclosure of records with respect to work performed under the subcontract in the same manner as required of the Contractor, c. those relating to the State's rights to audit records and d. to cooperate with any investigation, audit, or other inquiry related to the contract or any litigation relating thereto.

Contractor agrees that every such subcontract shall expressly stipulate that all labor performed and materials furnished pursuant thereto shall strictly comply with the requirements of the contract and that no subcontract shall impair the rights of the State or create any contractual relationship between the Subcontractor and the Department. Failure to disclose the identity of any and all Subcontractor(s) used by the Contractor as required hereunder may, at the sole discretion of the Department, result in a disqualification of the Subcontractor, if not immediately cured, or may result in termination of the contract for cause. The Contractor shall pay all Subcontractors for and on account of Services and/or Deliverables provided by such Subcontractors in accordance with the terms of their respective subcontracts. If and when required by the Department, the Contractor shall submit satisfactory evidence that it has made such payment. The Contractor shall, within five (5) Business Days of the Department's written request, file promptly with the requestor a copy of any subcontract providing services for the contract. The Contractor shall require that the Subcontractor must pass through all terms and conditions of the contract, including but not limited to Appendix A, to any lower tier subcontractors.

6. Secure Data Disposal

When requested by the Department, the Contractor shall destroy Data in all of its forms, including all back-ups. Data shall be permanently deleted and shall not be recoverable, according to NYS ITS Policy S13-003 Sanitization/Secure Disposal (<https://its.ny.gov/document/sanitization-secure-disposal-standard>) or successor and S14-003 Information Security Controls

(<https://its.ny.gov/document/information-security-controls>) or successor.

Certificates of destruction, in a form acceptable to the Department, shall be provided by the Contractor to the Department's point of contact in the Employee Benefits Division.

7. All of the prices, terms, warranties and benefits granted by the Contractor herein are comparable to or better than the equivalent terms being offered by the Contractor to other customers using similar scope and volume of services. If, during the course of the Contract, the Contractor enters into arrangements with any other customers providing services which are equal to or greater than those services to be provided under the Contract at more favorable terms, the Contract shall thereupon be deemed amended to provide the same to the Department.