



Department of
Civil Service

AMENDED December 16, 2022

REQUEST FOR PROPOSALS

ENTITLED:

“Dispute Resolution Program”

RELEASE DATE:

October 24, 2022

PROPOSAL DUE DATE:

December 22, 2022

IMPORTANT NOTICE: A Restricted Period under the Procurement Lobbying Law is currently in effect for this Procurement, and it will remain in effect until State Comptroller approval of the resultant Contract. During the Restricted Period for this Procurement ALL communications must be directed, in writing, solely to the Designated Contact as listed in Section 2.1(1) of this RFP and shall be in compliance with the Procurement Lobbying Law and the New York State Department of Civil Service “*Rules Governing Conduct of Competitive Procurement Process*” (refer to RFP, Section 2: Procurement Protocol and Process).

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

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

DCSprocurement@cs.ny.gov

Timothy R. Hogues
Commissioner
New York State Department of Civil Service

Dan Yanulavich
Director
Employee Benefits Division

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SECTION 1: INTRODUCTION

1.1 Purpose

The New York State Department of Civil Service (Department or DCS) has issued this Request for Proposal (RFP) to secure the services of a qualified organization (Offeror) to administer the Dispute Resolution Program (DRP). The DRP is a process agreed to by New York State and several labor unions representing certain State Employees to obtain an independent third-party review of the Treating Physicians' and Evaluating Physicians' conflicting medical determinations regarding an injured and/or ill employee's degree of disability.

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

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

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

1.2 Period of Performance

It is the Department's intent to execute a Contract for a five-year term beginning on the Service Start Date and ending on January 31, 2028, unless otherwise terminated in accordance with the Contract provisions. [Note: The Service Start Date is February 1, 2023, or the date OSC approves the Contract, whichever is later]

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

1.3 Overview of the New York State Workers' Compensation Benefit

All employers in New York State (NYS) are required to provide workers' compensation coverage for their employees pursuant to New York State Workers' Compensation Law (WCL). The WCL provides employees with coverage for medical benefits, with no out-of-pocket expense, as a result of occupational injury or illness. In addition to medical

benefits, employees receive indemnity benefits or payment for lost wages when out of work due to a work-related injury or illness.

The Workers' Compensation benefit for State employees involves the interaction and oversight of several State agencies including:

1. Workers' Compensation Board (WCB) which determines the occupational nature and compensability of employee injuries and/or illnesses;
2. New York State Insurance Fund (Fund) which handles the claims administrative functions for the State of New York as the employer;
3. Office of Employee Relations (OER) which negotiates terms and conditions of employment with the ten labor unions representing New York State employees; and
4. DCS which manages the contract referred to as the Insuring Agreement under Workers' Compensation Law Section 88-C and reimburses the Fund for Workers' Compensation Claims.

New York State, as an employer, can extend negotiated enhancements of the mandatory statutory benefits to State employees under certain conditions. The DRP is one of the several collectively bargained enhancements.

There are two Employee groups currently eligible for the DRP:

1. Group 1 Employees belong to the Security Services Unit, Security Supervisors Unit, and the Agency Police Services Unit.
2. Group 2 Employees belong to the State Police Troopers Unit, State Police Investigators Unit, State Police Commissioned/Non-Commissioned Officers Unit, and the State Police Management/Confidential Group.

The composition of each group is also described in *Description of Groups Covered by the DRP* (Attachment 17), of this RFP. Collectively bargained workers' compensation benefits for each group, as they relate to the DRP, are described below:

1. Medical Evaluation Program (MEP) – Group 1 and Group 2

The MEP is a voluntary program that provides Group 1 and Group 2 Employees who are injured on-the-job with an expedited, independent physical examination to determine their degree of disability and prognosis for full recovery. The Evaluating Physician review is arranged by the Fund. For off-duty injuries/illnesses of Group 2 Employees, the Evaluating Physician is the Staff

Physician of the Division of New York State Police. If the Evaluating Physician determines that the degree of disability is greater than fifty percent, the Employee continues to receive workers' compensation leave benefits at full pay. If the Evaluating Physician determines that the degree of disability is fifty percent or less, the Evaluating Physician also assesses the Employee's estimated physical capabilities and expected return to work. The Fund reports the results of the Evaluating Physician's examination to the Treating Physician and the Employing Agency. The Employing Agency uses the Evaluating Physician's Report (Form IME-4) and Estimated Physical Capabilities Form to assess the appropriateness of a Light Duty Assignment. Samples of a *Form IME-4 Independent Examiners Report of Independent Medical Examination* (Attachment 18), *Estimated Physical Capabilities Form* (Attachment 20), and *Estimated Physical Capabilities Form for New York State Police* (Attachment 21), are provided in this RFP. An Employee, who has been directed by the Employing Agency to report to a Light Duty Assignment as a result of the Evaluating Physician's report, may appeal through the DRP as described later in this Section of this RFP. Further details on the MEP are contained in *New York State Attendance and Leave Manual Policy Bulletin 93-02* (Attachment 23) and *Workers' Compensation Memorandum of Understanding* (Attachment 24) of this RFP.

2. Modified Duty Policy (MDP) – Group 2 only

The MDP outlines the policy for providing Group 2 Employees with a Modified Duty Assignment as a result of an on-duty or off-duty injury or illness. An Employee recovering from an off-duty injury or illness may request a Modified Duty Assignment by submitting documentation to the Staff Physician indicating that the Treating Physician has determined that the Employee's degree of disability is fifty percent or less. The Treating Physician must also complete an Estimated Physical Capabilities Form. An Employee recovering from an on-duty injury or illness may be required to work in a Modified Duty Assignment if the Evaluating Physician determines that the Employee is fifty percent or less disabled. The Evaluating Physician review is arranged by the Fund and includes completion of an Estimated Physical Capabilities Form. The Fund reports the results of the Evaluating Physician's examination to the Treating Physician and the Staff Physician.

The Staff Physician uses the Treating Physician's Report and, if applicable, the Evaluating Physician's Report (Form IME-4) and Estimated Physical Capabilities Form to assess the appropriateness of a Modified Duty Assignment. For both on and off-duty injuries and illnesses, the Staff Physician makes the final medical determination, and the State Police Superintendent has the sole authority to make a Modified Duty Assignment. An Employee who has been assigned or denied a Modified Duty Assignment as a result of a conflict between the degree of disability as determined by the Treating Physician and the Staff or Evaluating

Physician may appeal through the DRP. Further details on the MDP are contained in *State Police Executive Memorandums 09-15 and 09-17* (Attachment 25) and the corresponding *Memorandum of Agreement with the Police Benevolent Association* (Attachment 26) and *Memorandum of Agreement with the New York State Police Investigators Association* (Attachment 27) of this RFP.

Eligibility for, and the rules that govern the DRP differ slightly for each group. However, the required DRP services are identical with the exception of the Appeal Period. The collectively bargained DRP services are detailed in the materials included in *Memorandum of Agreement with the Police Benevolent Association* (Attachment 26), *Memorandum of Agreement with the New York State Police Investigators Association* (Attachment 27), and *Worker's Compensation Dispute Resolution Program Memorandum of Understanding* (Attachment 28) of this RFP. Group 1 is eligible only for work-related Medical Documentation Reviews, while Group 2 is eligible for both work-related and non-work-related Medical Documentation Reviews. Group 1 may use the DRP once during the administration of a work-related injury or illness; Group 2 may use the DRP multiple times for the same injury/illness when they are: assigned to; terminated from; receive a modification of; or receive an extension of a Modified Duty Assignment. Requests for Medical Documentation Review must be initiated on behalf of the Employee by the Employee's Treating Physician using an Appeal Request Form. A *Sample Appeal Request Form* (Attachment 29) is provided in this RFP. It is the Treating Physician's responsibility to submit, along with the Appeal Request Form, any and all medical documentation necessary to substantiate the Employee's degree of disability, treatment plan, prognosis, and estimated physical capability limitations. The Employee is responsible for providing the Appeal Request Form to the Treating Physician, informing the Treating Physician of the Appeal process, and requesting the Treating Physician to submit the Appeal to the selected Offeror. For an Appeal to be considered timely, the Treating Physician is requested to submit the Appeal Request Form, Form C-4: Doctor's Initial Report (for work-related injuries/illnesses), and other medical documentation to the selected Offeror within the allowed Appeal Period. In order to meet the filing deadline, the Treating Physician may send the Appeal Request Form, Form C-4: Doctor's Initial Report, and other medical documentation to the selected Offeror via facsimile or overnight mail. Samples of *Form C-4: Doctor's Initial Report* (Attachment 30) and *Form C-4.2: Doctor's Progress Report* (Attachment 31) are provided in this RFP.

1.4 Offeror Eligibility

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

1. The Offeror must, at time of Proposal submission and throughout the term of the Contract, possess the legal capacity to enter into a Contract with the Department.

2. The Offeror, at time of Proposal submission and throughout the term of the Contract, must be authorized to conduct business in New York State, or, if the Offeror is not so authorized at time of Proposal Due Date (as specified in Section 1.5 of this RFP), then the Offeror must, at the time of Proposal Due Date, have filed an application for authority to do business in New York State with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: <https://dos.ny.gov/form-corporation-or-business>. To register with the Secretary of State, contact: <https://www.dos.ny.gov/corps/index.html>). The Offeror shall notify the Department immediately in the event that there is any change in the above corporate status.
3. The Offeror must represent and warrant that, at time of Proposal submission, it has completed, obtained or performed all registrations, filings, approvals, authorizations, consents and examinations required by any governmental authority for the provision of the delivery of Project Services (as detailed in Section 3 of this RFP) and agree that it will, during the term of the Contract, comply with any requirements imposed upon it by law or regulation.
4. The Offeror must represent and warrant that, at time of Proposal submission, it possesses adequate staffing resources, financial resources, and organizational capacity to perform the type, magnitude, and quality of work specified in the RFP.
5. The selected Offeror must agree to contractual provisions to maintain and make available, as required by the State, a complete and accurate set of records for review by the State. Contractual provisions are set forth in the RFP and *Standard Clauses for New York State Contracts* (Appendix A), *Standard Clauses for All Department Contracts* (Appendix B), and *Information Security Requirements* (Appendix C). Such records shall include any and all financial records deemed necessary by the State to discharge its fiduciary responsibilities to the DRP participants and to ensure that public dollars are spent appropriately.
6. As of the Proposal Due Date and throughout the term of the Contract, the Offeror must have full accreditation from the Utilization Review Accreditation Commission (URAC).

1.5 Timeline of Key Events

EVENT	DATE
RFP Release Date	October 7, 2022
Deadline for Submission of Offeror Questions	October 14, 2022
Release Date of Official Responses to Offeror Questions	November 11, 2022

Proposal Due Date	December 9, 2022
Anticipated Tentative Contract Award	January 23, 2023
Anticipated Service Start Date	Subject to the required approvals

*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 2.1(1) of this RFP.

SECTION 2: PROCUREMENT PROTOCOL AND PROCESS

2.1 Rules Governing Conduct of Competitive Procurement Process

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

1. Designated Contact

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

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

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

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

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

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

3. Submission of Errors or Omissions in this RFP Document

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

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

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

Contact in hard copy at the address provided in Section 2 of this RFP.

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

**"Submission of Errors or Omissions for the
Dispute Resolution Program
Request for Proposals"**

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

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

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

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

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

4. Submission of Questions

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

5. Submission of Proposal

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

technical specifications outlined in Section 2 of this RFP. Each of the ten 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 ten USB drives that contain the Administrative and Technical Proposals should be packaged in the sealed box/envelope labeled Administrative Proposal.

- v. The master electronic submission must be sealed in a separate sealed box/envelope from the hard copy versions and labeled PROPOSAL USBs.
 - vi. Each Proposal must include a table of contents.
 - vii. 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.
 - viii. Each page of the Proposal (both the hard copies and the USB), including attachments, must be dated and numbered consecutively.
- b. Proposals should be placed and packaged together, by section, in sealed boxes/envelopes (i.e., all Administrative Proposals in one box, all Technical Proposals in a second box, and all Financial Proposals in a third box). Each sealed box/envelope should contain a label on the outside, which contains the information below. Each sealed box/envelope should be submitted to the Designated Contact at the address provided in Section 2.1(1) of this RFP.

**New York State Department of Civil Service
Request for Proposals
“Dispute Resolution Program”**

**OFFEROR NAME
OFFEROR ADDRESS**

Indicate content, as applicable

ADMINISTRATIVE, TECHNICAL, or FINANCIAL PROPOSAL
**There must be no Financial/cost information included in the Offeror’s
Administrative Proposal or Technical Proposal, except for proposed
performance guarantees.**

- c. All Proposals must be mailed or hand-delivered to the address provided in Section 2.1(1) of this RFP. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four hours prior to delivery. All Proposals must be received by 3:00 p.m. ET on the Proposal Due Date as set forth in Section 1.5 of the RFP.
- d. Any proposal received after 3:00 p.m. ET on the Proposal Due Date, as specified in Section 1.5, shall not be accepted by the Department and may be returned to the submitting entity at the Department's discretion. All Proposals submitted become the property of the Department.
- e. The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition is received by the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in accordance with the format set forth in Section 2.1(5) of this RFP and will be included as part of the Offeror's Proposal.
- f. An Offeror is solely responsible for timely delivery of the Proposal to the Department prior to the Proposal Due Date stated in Section 1.5 of this RFP. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Proposal is delivered by mail or courier, the Department recommends that it be sent "Return Receipt Requested", so the Offeror obtains proof of timely delivery. No phone, facsimile, or e-mail submission of Proposals will be accepted for this RFP. In addition, it is the sole responsibility of the Offeror to verify that all elements of the proposal submission are complete, correct, and without error.

6. Bid Deviations

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

consideration to the issue prior to the submission of Proposals. Failure to use the question and answer period and instead submitting a Proposal containing a bid deviation could render the entire Proposal non-responsive and rejected in its entirety.

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

7. Notification of Tentative Contract Award

A tentative award letter will be sent to the selected Offeror indicating a tentative award subject to successful contract negotiations. The remaining Offerors will be notified of the tentative award and the possibility that failed negotiations could result in an alternative award.

8. Debriefing

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

9. Submission of a Protest

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

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

- i. Time Frame: Any protest must be received no later than 5:00 p.m. ET on the tenth Business Day after an Offeror's receipt of written notification by the Department of a non-responsive determination or tentative award; or if a debriefing has been requested by the interested party, within five business days of the debriefing (whichever is later).
- ii. Content: The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- iii. Format of Submission: The protest must be in writing and submitted to the Designated Contact at the address provided in Section 2 of this RFP.

- iv. A protest of either a non-responsive determination or a selection decision must have one of the following statements clearly and prominently displayed on the envelope or package:

“Submission of Non-Responsive Determination Protest for Request for Proposals Dispute Resolution Program”

OR

“Submission of Tentative Award Protest for Request for Proposals Dispute Resolution Program”

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

b. Review of Submitted Protests

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

constitute the Department's final determination in the matter.

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

10. Department of Civil Service Reservation of Rights

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

- a. Make or not make an award under the RFP, either in whole or in part;
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, such amendments will also be posted to: <https://www.cs.ny.gov/DRPRFP/>;
- c. Prior to the bid opening, direct Offerors to submit Proposal modifications addressing subsequent RFP amendments;
- d. Withdraw this RFP, at any time, in whole or in part, prior to OSC approval of award of the contract;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Proposal fails to conform to any of the mandatory requirements of this RFP;
- g. Require clarification at any time during the Procurement process and/or require correction of apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Proposal and/or to determine an Offeror's compliance with the requirements of this RFP;
- h. Reject any or all Proposals received in response to this RFP;
- i. Change any of the scheduled dates stated in this RFP;
- j. Seek clarifications and revisions of Proposals;
- k. Establish programmatic and legal requirements to meet the Department's needs, and to modify, correct, and/or clarify such requirements at any time during the Procurement, provided that any such modifications would not materially benefit or disadvantage any particular Offeror;

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

11. Disclaimer

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

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

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

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

a. NOTICE TO OFFEROR AND ITS LEGAL COUNSEL

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

presented in any material submitted in response to this RFP.

The Department shall take reasonable steps to protect from public disclosure any records or portions thereof relating to this solicitation that are exempt from disclosure under FOIL. Information constituting trade secrets or critical infrastructure information for purposes of FOIL must be clearly marked and identified as such by the Offeror upon submission. To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding FOIL. If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret or critical infrastructure information and desires that such information not be disclosed pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing a *Freedom of Information Law Request for Redaction Chart* (Attachment 10). The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of *Freedom of Information Law Request for Redaction Chart* (Attachment 10) contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, or summary assertions that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

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

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

Acceptance of the identified information by the Department does not

constitute a determination that the information is exempt from disclosure under FOIL. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the Department.

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

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

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

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

2. Public Officers Law

All Offerors and Offerors' employees and agents must be aware of and comply with the requirements of the New York State Public Officers Law (POL), particularly POL sections 73 and 74, as well as all other provisions of NYS law,

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

3. New York State Required Certifications

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

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

4. New York Subcontractors and Suppliers

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

SECTION 3: PROJECT SERVICES

The Department is seeking a qualified Offeror to provide comprehensive administration of the DRP.

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

1. Establish and maintain a network of Reviewing Physicians (RPs);
2. Manage all Program Communications; and
3. Prepare and deliver accurate and timely reports.

3.1 Account Team

The Offeror must provide a knowledgeable, experienced account leader and team who have the responsibility and authority to command the appropriate resources necessary to implement and deliver Project Services (hereinafter "Account Team").

1. Duties and Responsibilities

- a. The Account Team must respond to any and all administrative and clinical concerns and inquiries posed by the Department, to the satisfaction of the Department, within one Business Day.
- b. The proposed Account Team must guarantee that the DRP complies with all legislative and statutory requirements. In the event the Offeror is unable to comply with any legislative or statutory requirements, the Department must be notified in writing immediately.
- c. The Offeror must ensure that its Account Team immediately notify the Department of actual or anticipated events impacting DRP costs and delivery of services to Employees, including but not limited to proposed legislative or statutory requirements, litigation, and operational issues.
- d. The account leader must possess at least five years of experience serving as an account leader. The Offeror must advise the Department immediately if replacement of the account leader is contemplated during the term of the Contract.

3.2 Implementation Plan

The Offeror must deliver as part of its Technical Proposal an overall Implementation Plan to achieve Contract requirements and deliver the Project Services. Implementation activities must be completed so that Full DRP Services can commence on the Service Start Date.

1. Duties and Responsibilities

- a. The Offeror must, by the Service Start Date, be operationally ready as described by, but not limited to, the following:
 - i. Establishment of a comprehensive Network of DRP Reviewing Physicians (RPs), which meets the requirements set forth in Section 3.3 of this RFP.
 - ii. Development of an Appeal Request Form which will be used by covered Employees and their Treating Physicians to file an Appeal under the DRP.
 - iii. Distribution of the Appeal Request Form filing instructions, including Appeal eligibility and filing deadlines, to State agencies with Employees covered by the DRP.
 - iv. Training of Offeror staff on how to track Appeals, initiate the Medical Documentation Review process, and report the outcome of the Medical Documentation Reviews within the specified DRP Review Period.

3.3 Reviewing Physician Network

The Offeror must establish and maintain a network of RPs, who cannot be the Treating or Evaluating Physician. The Offeror must contract with RPs, including negotiating fees and making payments to RPs for services rendered under the DRP. RPs shall not look to the Department for payment of any kind.

1. Duties and Responsibilities

- a. The Offeror must establish and maintain a network of RPs that meets the following requirements:
 - i. Authorized by the New York State Workers' Compensation Board (WCB) pursuant to Workers' Compensation Law;
 - ii. Have specialized expertise in the treatment and/or diagnosis of work-related injuries/illnesses;

- iii. Certified specialists in the appropriate field when that certification is necessary for making and evaluating degree of disability determinations;
- iv. Have no less than three certified physicians from each of the following specialties: Cardiology, Chiropractic, Neurology, Orthopedics, and Psychiatry. Additional physicians must be added to the network, as needed, based on Appeal volume and/or specialty; and
- v. Testify before the WCB when appropriate and necessary.

3.4 DRP Appeals Process

The Offeror must be responsible for reviewing conflicting medical opinions regarding an employee's degree of disabilities. The following describes the appeals process and the Offeror's responsibilities.

1. Duties and Responsibilities

- a. Upon receipt of the Appeal Request Form, the selected Offeror must immediately request supporting medical documentation from the Evaluating Physician. For work-related injuries and/or illness, supporting documentation must include the Form IME-4: Evaluating Physician's Report and Estimated Physical Capabilities Form. Once the selected Offeror receives complete medical documentation from both the Treating and Evaluating Physicians, the Appeal is considered a Valid Appeal and the Program Review Period will commence. The selected Offeror must notify the Employing Agency, the Treating Physician, the Evaluating Physician, the Employee, the appropriate labor union and the Fund, if applicable, of the receipt of a Valid Appeal and identify the date and time of receipt. The selected Offeror must complete the Medical Documentation Review within the Program Review Period of seven calendar days, which means a full twenty-four hour period of time from midnight to midnight, not including the day of the event.
- b. The DRP's RP shall evaluate medical records, the Treating and Evaluating Physician's reports and other necessary documentation, which may include laboratory reports and X-rays, to render a decision, as to whether the documentation better supports either the Treating or Evaluating Physician's degree of disability determination. The Department will provide the Offeror selected as a result of this RFP with copies of the Department's job descriptions for all employees covered by the DRP. The selected Offeror shall report, in writing, the RP's decision to uphold the

Treating or Evaluating Physician's determination within the specified Program Review Period. This report may be sent via facsimile but must also be mailed to the Employee, Employing Agency, the Evaluating Physician, the Treating Physician, and the appropriate labor union and the Fund, if applicable.

- c. The Offeror must assure that the RP is not the Staff, Treating, or Evaluating Physician.
- d. The Offeror must ensure that RPs complete the Medical Documentation Reviews within the appropriate Program Review Period.
- e. The Offeror must ensure that RP's decision to support either the Treating or Evaluating Physician's determination regarding an Employee's degree of disability are based on review of the Employee's medical documentation, reports, and other appropriate documentation, which may include laboratory reports and X-rays, as provided by the Treating and/or Evaluating Physicians.

3.5 DRP Communications

The Offeror will be responsible for all DRP communications which shall include mailing services, telephone and facsimile capabilities, and/or electronic media transmissions for the secure transfer and receipt of information between the Offeror and the Employee, Treating Physician, Evaluating Physician, Employing Agency, appropriate labor union and the Fund.

1. Duties and Responsibilities

- a. The successful Offeror must create, produce, and distribute DRP communication material to State agency personnel offices in a paper and electronic format, including but not limited to:
 - i. An Appeal Request Form which must be used by eligible Employees to file an Appeal under the DRP;
 - ii. A brochure that describes the details of the DRP, including the procedures and eligibility criteria for filing an Appeal, filing instructions, and Program Review Period deadlines; and
 - iii. Other informational material such as customized forms and letters to assure the effective implementation and delivery of the required Project Services.

- b. All DRP communications developed by the Offeror are subject to the Department's review and prior written approval.
- c. The Offeror is responsible for all development, production, and mailing costs incurred to disseminate DRP communication materials.

3.6 Maintenance of Confidential Employee Records

The Offeror shall be responsible for maintaining all Employee records in a secure and confidential manner and in accordance with the requirements of the RFP including Appendix C, Information Security Requirements.

1. Duties and Responsibilities

Record keeping must be in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and shall include, at a minimum:

- a. Maintaining a confidential medical case record for each Appeal, which shall include but not be limited to the Treating Physicians' reports; the Evaluating Physician's reports; and the Reviewing Physician's decision. In cases where the required medical documentation to support an Appeal has not been received by the selected Offeror within ninety calendar days of its receipt of information used to establish the medical case record, the selected Offeror shall destroy, in a confidential and secure manner, all medical case records and all other records related to the case. If such destruction is not feasible, the selected Offeror shall limit further uses and disclosures of such Confidential Information to those purposes that make the return or destruction of the Confidential Information infeasible.
- b. Use appropriate, documented safeguards to prevent the use or inappropriate or unintended disclosure of Program Confidential Information. The selected Offeror shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the selected Offeror's operations and the nature and scope of its activities.
- c. Describing the process for establishing, maintaining, and securing confidential case records in a HIPAA compliant manner, for establishing, maintaining, and securing confidential case records.
- d. Submitting a copy of the information security program that includes administrative, technical, and physical safeguards for confidential medical case records. If company policy precludes distribution of the information security program, the Offeror must make arrangements for the Department's review.

3.7 Reporting

The Offeror will be responsible for preparing and delivering accurate and timely reports.

1. Duties and Responsibilities

- a. Within the required seven calendar day Program Review Period, the Offeror must provide a written report of the Medical Documentation Review decision to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate labor union, and the Fund, if applicable, as to whether the documentation better supports either the Treating or Evaluation Physician's degree of disability determination. The report must include an Employee identifier and a statement in support of either the Treating or Evaluating Physician's degree of disability determination.
- b. Closely following the format specified in the *Dispute Resolution Program Monthly Report* (Attachment 32) of this RFP, the Offeror must submit a monthly Appeals summary report for each employee group, which summarizes the number of Appeals received, the number of Valid Appeals, the disposition of each completed Appeal, and the number of Appeals billed to the DRP. This report is due thirty calendar days after the end of each month.
- c. The Offeror must submit a Medical Documentation Review report for each employee group, which summarizes the number of Appeals completed within the applicable Program Review Period, as well as the distribution of Appeals by Reviewing Physician category. The Offeror should closely follow the format specified by the Department in *Dispute Resolution Program Quarterly Medical Documentation Review Summary* (Attachment 22) of this RFP. The report is due thirty calendar days after the end of each quarter.
- d. The Offeror must provide Ad Hoc reports and other data analysis at no additional fee to the Department. The exact format, frequency, and due dates for such reports shall be specified by the Department.
- e. Reporting Services Guarantee: The Offeror must state its agreement and guarantee that all reports in Section 3.7 of this RFP will be accurate and delivered to the Department no later than their respective due dates.

3.8 Transition and Termination of Contract

The Offeror shall ensure that upon termination of the Contract, any transition to another organization be done in a way that provides uninterrupted access to Project Services through final termination of the Contract. In addition, the Offeror and the selected successor shall fully cooperate with the Department to create and establish a Transition Plan in a timely manner.

1. Duties and Responsibilities

- a. The Offeror must commit to fully cooperate with the successor contractor to ensure the timely, smooth transfer of information necessary to administer the DRP.
- b. The Offeror must, within ninety calendar days of the end of the Contract, or within fifteen calendar days of notification of termination, if the Contract is terminated prior to the end of its term, provide the Department with a detailed written Transition Plan.
- c. Within fifteen Business Days from receipt of the Transition Plan, the Department shall either approve the Transition Plan or notify the Offeror, in writing, of the changes required to the Transition Plan so as to make it acceptable to the Department.
- d. Within fifteen Business Days from the Offeror's receipt of the required changes, the Offeror shall incorporate said changes into the Transition Plan and submit such revised Transition Plan to the Department for approval.
- e. The selected Offeror shall be responsible for transitioning the Program in accordance with the approved Transition Plan.
- f. To ensure that the transition to a successor organization provides Employees with uninterrupted access to DRP Services, and to enable the Department to effectively manage the Contract, the Offeror is required to provide the following Contractor related obligations to the Program through the final financial settlement of the Agreement which includes, but is not limited to:
 - i. Completing all required reports in the reporting section of this RFP;
 - ii. Providing the DRP with sufficient staffing in order to address State audit requests and reports in a timely manner;
 - iii. Agreeing to fully cooperate with all the Department or OSC audits consistent with the requirements of Appendices A and B;

- iv. Performing timely reviews and responses to audit findings submitted by the Department and the OSC's audit unit; and
- v. Remitting reimbursement due to the DRP in a timely manner upon final audit determination.

SECTION 4: ADMINISTRATIVE PROPOSAL

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

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

4.1 Formal Offer Letter

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

4.2 Offeror Attestation Form

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

4.3 Subcontractors or Affiliates

The Offeror must complete the *Subcontractors or Affiliates* form (Attachment 9) to identify all Subcontractors or Affiliates with whom the Offeror subcontracts to provide

Project Services. For purposes of reporting in the *Subcontractors or Affiliates* form (Attachment 9), Subcontractors include:

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

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

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

4.4 New York State Standard Vendor Responsibility Questionnaire

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

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

By submitting a Proposal, the Offeror agrees to fully and accurately complete the Questionnaire. The Offeror acknowledges that the State's execution of the Contract will

be contingent upon the State's determination that the Offeror is responsible, and that the State will rely on the Offeror's responses to the Questionnaire when making its responsibility determination. The Offeror agrees that if it is found by the State that the Offeror's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Department may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

4.5 New York State Tax Law Section 5-a

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

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

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

1. Form ST-220-TD must be filed with and returned directly to DTF and can be found at: http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. 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 Insurance Requirements

Prior to the start of work the Offeror shall procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this RFP, policies of insurance as required by this section, written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Section should be licensed or authorized by DFS to issue insurance in the State of New York. The Department may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

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

1. General Conditions

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

State Department of Civil Service, Agency Building 1, Empire State Plaza, Albany, NY 12239, as the certificate holder.

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

primary and non-contributory to other insurance available to the Department and their officers, agents, and employees. Any other insurance maintained by the Department and their officers, agents, and employees shall be in excess of and shall not contribute with the Offeror's insurance.

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

by fire or other insured casualty a waiver of the insurer's right of subrogation against the Department and their officers, agents, and employees, or, if such waiver is unobtainable:

- i. An express agreement that such policy shall not be invalidated if the Offeror waives or has waived before the casualty, the right of recovery against the Department and their officers, agents, and employees; or
- ii. Any other form of permission for the release of the Department or any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees.

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

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

- k. Notice of Cancellation or Non-Renewal: Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five Business Days of receipt of any notice of cancellation or nonrenewal of insurance, the Offeror shall provide the Department with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

- l. Policy Renewal/Expiration: Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to the Department. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to the Department, the Offeror shall immediately cease work. The Offeror shall not resume work until authorized to do so by the Department.

- m. Deadlines for Providing Insurance Documents after Renewal or Upon Request: As set forth herein, certain insurance documents must be provided to the Department contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Offeror shall provide the applicable insurance document to the Department as soon as possible but in no event later than the following time periods:
 - i. For certificates of insurance: 5 Business Days from request or renewal, whichever is later;

 - ii. For information on self-insurance or self-retention programs: 15 Calendar Days from request or renewal, whichever is later;

 - iii. For other requested documentation evidencing coverage: 15 Calendar Days from request or renewal, whichever is later;

 - iv. For additional insured and waiver of subrogation endorsements: 30 Calendar Days from request or renewal, whichever is later; and

 - v. For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 Business Days from request or renewal, whichever is later.

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

2. Specific Coverage and Limits

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

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

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

- i. Premises liability;
- ii. Independent contractors/subcontractors;
- iii. Blanket contractual liability, including tort liability of another assumed in a contract;
- iv. Defense and/or indemnification obligations, including obligations assumed under any Contract resulting from this Solicitation; and

v. Cross liability for additional insureds.

- b. Business Automobile Liability Insurance: The Offeror shall maintain Business Automobile Liability Insurance in the amount of at least \$1,000,000 each accident, covering liability arising out of automobiles used in connection with performance under any Contract resulting from this RFP, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.
- c. Professional Errors and Omissions Insurance: The Offeror shall maintain Professional Errors and Omissions (Professional Liability) in the amount of at least \$5,000,000 each occurrence, for claims arising out of but not limited to delay or failure in diagnosing a disease or condition and alleged wrongful acts, including breach of contract, bad faith, and negligence. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.

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

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

- ii. Personally, identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- iii. Privacy notification costs;
- iv. Regulatory defense and penalties;
- v. Website media liability; and
- vi. Cybertheft of customer's property, including but not limited to money and securities.

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

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

- iv. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance, available from the Contractor's Group Self-Insurance Administrator.

- f. Disability Benefits Insurance: To comply with coverage provisions of WCL Section 220(8), regarding disability benefits, businesses must be legally exempt from obtaining disability benefits insurance coverage; or obtain such coverage from insurance carriers; or be a Board-approved self-insured employer. An Offeror must provide one of the following forms:
 - i. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.businessexpress.ny.gov); or
 - ii. Form DB-120.1, Certificate of Disability Benefits Insurance, sent to the Department by the Contractor's insurance carrier upon request; or
 - iii. Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

SECTION 5: TECHNICAL PROPOSAL

The purpose of Section 5 of the RFP is to set forth the submissions required of the Offeror. The Offeror's Technical Proposal must contain responses to all required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Proposal. Each Offeror's Technical Proposal will be evaluated based on the responses to the required submissions contained in Section 5 of this RFP. An Offeror must not include any cost information in the Technical Proposal, including attachments. Specific savings estimates (dollars or percentages) must not be quoted in the Technical Proposal or in any attachments submitted with the Technical Proposal.

5.1 Executive Summary

The Offeror must submit an Executive Summary describing its capacity and proposed approach to administering the DRP, which covers over 30,000 Employees. The Executive Summary must include:

1. The name and address of the Offeror's main and branch offices and the name of the senior officer who will be responsible for this account.
2. A description of the Offeror's ability, experience, reliability, and integrity to fulfill the requirements of this RFP.

5.2 Account Team

The Offeror must complete the *Biographical Sketch Form* (Attachment 13) for all key personnel including Subcontractor provided key staff, if any, of the proposed Account Team. Where individuals are not named, include qualifications of the individuals that will fill the positions. The Offeror must provide:

1. The name and address of the Offeror's main and branch offices, and the name of the senior officer(s) who will be responsible for this account;
2. An organizational and staffing plan that includes the roles and responsibilities of key personnel involved in administering the DRP, their planned level of effort, their anticipated duration of involvement, and their daily level of availability. An organizational chart must be included in the proposal which identifies the Offeror's staff and staff from any Subcontractor, including their name and title, to be used in delivering the Project Services;
3. Reporting relationships and the responsibilities of key personnel on the Account Team; and how the team will interact with other departments such as the call center, clinical services, reporting, auditing, and network management within

Offeror's organization. Describe how the Account Team interfaces with senior management and ultimate decision-makers within Offeror's organization; and

4. Identification of where Offeror's Account Team staff will be located.

5.3 Implementation Plan

The Offeror must provide a detailed Implementation Plan in narrative, diagram, and timeline formats, designed to meet the specific Implementation completion date.

1. The Implementation Plan must include estimated timeframes for individual task completion, testing dates and objectives, and areas where complications may be expected. It must include key activities such as:
 - a. RP Network development;
 - b. DRP communications' development;
 - c. Maintenance of all Employee records in a confidential manner; and
 - d. Training of Offeror's staff.

5.4 Reviewing Physician Network

The Offeror must provide a narrative describing in detail, the proposed processes that will be utilized to develop the RP Network specified in Section 3.3 of this RFP, including the following:

1. Utilizing the *Offeror's Proposed RP Network* form (Attachment 19), the Offeror must describe the composition of the RP Network that the Offeror proposes to establish for the DRP.
2. Confirming the Offeror's RP Network will meet the specified minimum requirements by the Service Start Date.
3. Describing the Offeror's process for profiling RPs and measuring outcomes. Such outcomes include but are not limited to: Appeal dispositions; timeliness of Medical Documentation Reviews; and clarity and thoroughness of reports filed.
4. Submitting a copy of the medical guidelines that will be used by RPs in evaluating degree of disability for injuries and/or illnesses. These guidelines must comply with appropriate New York State laws, rules, and regulations.

Describe the frequency of and process the Offeror will use to update these guidelines.

5. Describing the controls in place to ensure that the RP's decision supporting the Treating Physician's or the Reviewing Physician's determination regarding the Employee's degree of disability is based on the review of the Employee's medical documentation, reports, and other appropriate documentation that may include laboratory reports and x-rays as provided by the Treating and/or Evaluating Physicians.
6. Describing the Offeror's approach to contracting RPs for the DRP Network. Include:
 - a. A description of how the Offeror will ensure that the Offeror's proposed RP Network meets the certification and credentialing requirements of this RFP;
 - b. The criteria the Offeror uses to select the RPs for the DRP;
 - c. The steps the Offeror would take to promptly add RPs to the RP Network in order to address increased Appeals volume or an Appeal related to a rare or unique injury and/or illness; and
 - d. An explanation of whether the RPs are employees or independent contractors. If they are independent contractors, provide a sample copy of the Offeror's physician contract.

5.5 DRP Appeals Process

1. The Offeror must provide a narrative describing in detail the proposed processes that will be utilized in the DRP Review of Employees as specified in Section 3.4 of this RFP, including the following:
 - a. Describe the process the Offeror will use to ensure a HIPAA compliant method for the confidential and secure transfer and receipt of information between the Offeror and the Treating Physician, Evaluating Physician, Employing Agency, appropriate labor union, and the Fund.
 - b. Describe the controls in place to ensure that the RP is not the Staff, Treating or Evaluating Physician, and that RPs complete their Medical Documentation Reviews within the Program Review Period(s).
 - c. Describe the controls in place to ensure that RP's decision to support either the Treating or Evaluating Physician's determination regarding an Employee's degree of disability are based on review of the Employee's

medical documentation, reports, and other appropriate documentation, which may include laboratory reports and X-rays, as provided by the Treating and/or Evaluating Physicians.

5.6 DRP Communications

1. The Offeror must provide a narrative describing in detail the proposed processes that will be utilized in the DRP Communications as specified in Section 3.5 of this RFP, including the following:
 - a. Provide two examples of communications the Offeror has developed for other clients or, if none are appropriate, proposed drafts for the DRP.
 - b. Describe the Offeror's recommended approach to design, seek approval, and distribute DRP Communications, and incorporate the Department's feedback.
 - c. Describe the resources that will be available to support the Department's development of various DRP communications and the Offeror's ability to provide input into such communications quickly.
 - d. Confirm the commitment to work with the Department to develop appropriate customized forms and letters for the DRP. Provide examples of how the Offeror has worked with other clients to produce customized communications.
 - e. Indicate if the Offeror has staff within its organization or a Subcontractor that specializes in Program communications. Describe their capacity to provide the communication support described above.

5.7 Maintenance of Confidential Employee Records

1. The Offeror must provide a narrative describing in detail the proposed processes that will be utilized in the DRP Maintenance of Confidential Employee Records as specified in Section 3.6 of this RFP, including the following:
 - a. Describing the process that is HIPAA compliant, for establishing, maintaining, and securing confidential case records.
 - b. Submitting a copy of the information security program that includes administrative, technical, and physical safeguards for confidential medical case records. If company policy precludes distribution of the information security program, the Offeror must make arrangements for the Department's review.

5.8 Reporting

1. The Offeror must:
 - a. Provide a narrative describing in detail the proposed processes that will be utilized in Reporting as specified in Section 3.7 of this RFP, including confirmation of the Offeror ability and willingness to provide Ad Hoc Reports and other data analysis; and examples of Ad Hoc reporting that have been performed for other clients.
 - b. Provide a sample report the Offeror proposes to use to document the Medical Documentation Review decisions to the Employee, the Employing Agency, the Treating Physician, the Evaluating Physician, the appropriate labor union, and the Fund, if applicable. The report must include a statement in support of either the Treating or Evaluating Physician's degree of disability determination.
 - c. Describe times in which the Offeror failed to meet the required timelines of medical documentation review periods for current clients, including the timelines were not met, the remedial steps taken, and controls implemented to prevent recurrence.
2. **Reporting Services Guarantee**: In this part of its Technical Proposal, the Offeror must state its agreement and guarantee that all reports in Section 3.7 of this RFP will be accurate and delivered to the Department no later than their respective due dates. The Offeror shall propose the forfeiture of a specific dollar amount of the Offeror's Valid Appeal Fees.

Utilizing the *Performance Guarantees* form (Attachment 6), the Offeror must propose a forfeiture amount (Standard Credit Amount) for each calendar day the Department has not received a report by its respective due date. The forfeited amount (Standard Credit Amount) for each report that is not received by its respective due date is \$25.00 per calendar day per report. However, an Offeror may propose a higher amount.

5.9 Transition and Termination of Contract

1. The Offeror must provide an outline of the key elements and tasks that the Offeror proposed would be included in its Transition Plan to ensure that all the required duties and responsibilities are completed if the Offeror were to be the incumbent Contractor. Include a brief explanation on how the Offeror would accomplish this with the successor contractor.

SECTION 6: FINANCIAL PROPOSAL

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

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

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

The Financial Proposal must consist of the following:

6.1 Valid Appeal Fee

Throughout the term of the Contract, the Offeror will be paid on a monthly basis for each Valid Appeal it reviews under the DRP.

Using the *DRP Fee Form* (Attachment 16), the Offeror must provide the proposed fixed all-inclusive Valid Appeal Fee for each Valid Appeal it reviews for each year of the Contract. The Offeror's proposed unit rates as set forth in the *DRP Fee Form* (Attachment 16) must be guaranteed for the term of the Contract.

The Offeror shall not charge the Department for Appeal requests that are incomplete or are not deemed to be Valid Appeals.

SECTION 7: EVALUATION AND SELECTION CRITERIA

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

7.1 Administrative Proposal Evaluation

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

7.2 Technical Proposal Evaluation

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

1. Technical Score Ratings

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

a. Excellent (5)

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

b. Good (4)

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

c. Meets Criteria (3)

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

d. Fair (2)

The Offeror's answer is minimal; or the answer is very general and does not fully address the question; or the Offeror meets only some of the criteria.

e. Poor (1)

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

2. Performance Guarantee Ratings

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

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

a. Excellent (4)

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

b. Good (3)

- i. The Offeror's proposed performance guarantee equals the

DRP’s service level standard contained within this RFP, and the Offeror’s proposed credit amount is 125% or more of the Standard Credit Amount stated within this RFP; or

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

c. Meets Criteria (2)

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

d. Poor (1)

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

3. Allocation of Technical Score Points

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

Section	Title	% of Technical Score
5.1	Executive Summary	5%
5.2	Account Team	5%
5.3	Implementation Plan	5%
5.4	Reviewing Physician Network	25%
5.5	DRP Appeals Process	25%
5.6	DRP Communications	15%

5.7	Maintenance of Confidential Employee Records	10%
5.8	Reporting	5%
5.9	Transition and Termination of Contract	5%
Total		100.0%

4. Technical Proposal Scoring

The Technical Proposal evaluation will be based on 500 total available points. The average score of all evaluators for each section of the Technical Proposal will be applied against the weights depicted in the chart above.

7.3 Financial Proposal Evaluation

Each Offeror’s Financial Proposal will be evaluated by the Department.

1. Financial Proposal Scoring

- a. The Department will calculate a Total Projected Cost for each Offeror by multiplying the Offeror’s quoted Valid Appeal Fee as presented by the Offeror on the *DRP Fee Form* (Attachment 16), by the average number of valid appeals completed as depicted in the *DRP Services Summary* (Attachment 15) of this RFP.
- b. The Offeror’s Proposal with the lowest Total Projected Cost will be awarded 500 points. A Financial Proposal score for each remaining Offeror will be determined based on the following formula:

Cost Score of Evaluated Proposal =

500 * Lowest Evaluated Cost

divided by

Total Cost of Proposal being evaluated

7.4 Total Combined Score

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

7.5 Best Value Determination

The Department shall select and enter into negotiations for the purpose of executing a Contract with the responsive and responsible Offeror that has accumulated the highest Total Combined Score.

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

SECTION 8: ADDITIONAL PROVISIONS

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

1. Work in The Continental United States of America

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

2. Information Classification

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

- a. Confidentiality = High
- b. Integrity = High
- c. Availability = High

3. Contractor Data Retention (Amended)

The Contractor must provide the Department with continued access to ~~all 1094 and 1095 files produced pursuant to this Agreement~~ **to all Data for no less than four years 365 Calendar days** beyond the expiration or termination of the Agreement. All Contract provisions related to the protection and security of the Data will survive termination of the Contract. This provision does not limit or lessen the time period or Contractor's obligations, pursuant to *Standard Clauses for New York State Contracts* (Appendix A), to establish and maintain Records.

4. Use and Disclosure of Protected Health Information

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

individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Offeror's disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the resulting Contract. As such, the Offeror, as a Business Associate, will be required to comply with the provisions of this Section.

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

- ii. Contactor is a “covered entity” under HIPAA in connection with its provision of certain services under the resulting Contract. To the extent Offeror acts as a HIPAA “Business Associate” of the group health plans identified as “covered entities”, the Offeror shall adhere to the requirements as set forth herein. Offeror is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Offeror to perform the services hereunder and for the use and disclosure of information, including the Department’s PHI, as permitted under the resulting Contract.

- d. Permitted Uses and Disclosures of the Department’s PHI: The Offeror may create, receive, maintain, access, transmit, use, and/or disclose the Department’s PHI solely in accordance with the terms of the resulting Contract. In addition, the Offeror may use and/or disclose the Department’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Offeror may use and disclose the Department’s PHI for the proper management and administration of the Offeror if such use is necessary for the Offeror’s proper management and administration or to carry out the Offeror’s legal responsibilities, or if such disclosure is required by law or the Offeror obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Offeror of any instances of which it is aware in which the confidentiality of the information has been breached. Additionally, the Offeror may use and/or disclose the Department’s PHI, as appropriate:
 - i. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3) or (4); and
 - ii. To de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may, consistent with this section, be used and disclosed by Offeror only as agreed to in writing by the Department and permitted by law.

- e. Nondisclosure of the Department’s PHI: The Offeror shall not create, receive, maintain, access, transmit, use, or further disclose the Department’s PHI otherwise than as permitted or required by the resulting Contract or as otherwise required by law. The Offeror shall limit its uses and disclosures of PHI when practicable to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI’s access, use, or disclosure.

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

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

- ii. Required Information: In addition to the information required in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, the Offeror shall provide the following information to the Department within the time period identified in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, except when, despite all reasonable efforts by the Offeror to obtain the information required, circumstances beyond the control of the Offeror necessitate additional time. Under such circumstances, the Offeror shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty Calendar Days from the date of discovery:
 - 1) The date of the breach incident;
 - 2) The date of the discovery of the breach;
 - 3) A brief description of what happened;
 - 4) A description of the types of unsecured PHI that were involved;
 - 5) Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
 - 6) A brief description of what the Offeror is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - 7) Any other details necessary to complete an assessment of the risk of harm to the individual.
- iii. The Offeror will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed as a result of a breach, as well as the Secretary of the United States Department of Health and Human Services and the media, as required by 45 CFR Part 164.
- iv. The Offeror shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.

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

the Department's compliance with HIPAA and its implementing regulations.

- I. Termination: This Contract may be terminated by the Department at the Department's discretion if the Department determines that the Offeror, as a Business Associate, has violated a material term of this Section. Data return and destruction upon contract termination is governed by *Information Security Requirements* (Appendix C).

- m. Indemnification: Notwithstanding the provisions in *Standard Clauses for All Department Contracts* (Appendix B), the Offeror agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents, or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section, Use and Disclosure of Protected Health Information, or from any acts or omissions related to this section by the Offeror or its employees, officers, subcontractors, agents, or other members of its workforce, without limitations. Accordingly, the Offeror shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs, or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding, or demand by any third party which results from the Offeror's acts or omissions hereunder. The Offeror's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract.

- n. Miscellaneous:
 - i. Survival: The respective rights and obligations of Business Associate and the "covered entities" identified herein under HIPAA and as set forth in this Section, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION, shall survive termination of the resulting Contract.

 - ii. Regulatory References: Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended, or modified, as of their respective compliance dates.

 - iii. Interpretation: Any ambiguity in the resulting Contract shall be resolved to permit covered entities to comply with HIPAA.

5. Entire Contract

The resulting Contract, including all appendices, constitutes the entire Contract between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by both parties hereto, except as otherwise provided herein. The Contract is subject to amendment(s) only upon mutual consent of the Parties, reduced to writing and approved by OSC and subject to the termination provisions contained herein.