

**SECTION II: PROCUREMENT PROTOCOL AND PROCESS****A. Rules Governing Conduct of Competitive Procurement Process****1. Timeline/Key Events**

RFP Release Date	June 5, 2017
Exhibit I.K Procurement Lobbying Offeror's Affirmation of Understanding and Agreement Due Date	See below*
Request for Data Necessary to Submit a Proposal	
Due Date (See Section III.G of this RFP)	June 21, 2017
Pre Proposal Conference	June 22, 2017
Questions Due Date	June 29, 2017, 5:00pm ET
Release Date of Official Responses to Questions	July 13, 2017
Exhibit I.J Notice of Bidding Intention Due Date	July 28, 2017

**Amended July 31, 2017**

Proposals Due Date	<del>August 18</del> <b>September 6, 2017</b> , 3:00pm ET
Anticipated Contract Start Date	Upon OSC approval of the Agreement To be fully implemented by January 1, 2019

\* Prior to the Offeror's **initial** contact with the Department, the Offeror must complete and submit Exhibit I.K Procurement Lobbying Offeror's Affirmation of Understanding and Agreement to the Pharmacy Benefit Services Procurement Manager.

**2. Procurement Lobbying Limitations**

- a. Pursuant to State Finance Law sections 139-j and 139-k, this Procurement imposes certain procurement lobbying limitations. Offerors are restricted from making contacts during the Procurement's "Restricted Period" (from the issuance of this RFP until the date of the Agreement's final approval by the OSC) to other than designated staff of the Department and the Executive Branch of New York State government, unless the contact falls within certain statutory exceptions ("permissible contacts"). For purposes of this Section II.A.2 of this RFP, "Offeror" includes prospective Offerors prior to the due date for the submission of offers/bids (i.e. Proposals) in response to this RFP. Staff is required to obtain certain information from Offerors and others whenever there is a contact 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 statutes' requirements. Findings of non-responsibility result in rejection for contract

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award, and if an Offeror is subject to two non-responsibility findings within four years the Offeror also will be determined ineligible to submit a Proposal on, or be awarded a Contract for four years from the date of the second non-responsibility finding. The Procuring Agencies' Policy and associated procedures are included as Exhibit I.L, Procurement Lobbying Policy: Restrictions on Contacts During the Procurement Process, to this RFP. Further information about these requirements can be found at: <http://www.ogs.ny.gov/aboutOGS/regulations/defaultAdvisoryCouncil.html>

- b. In order to ensure public confidence and integrity in the Procurement process, the Department will strictly control all communications between any Offeror and participants in the evaluation process; from the date this RFP is released until the Agreement is approved by OSC. "Offeror" means any individual or entity, or any employee, agent, consultant, or person acting on behalf of such individual or entity, who contacts the Department or any other State governmental entity about a governmental procurement during that procurement's restricted period, whether or not the caller has a financial interest in the outcome of the governmental procurement; provided, however, that a governmental agency (or its employees) that communicates 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. All contacts, inquiries, questions, filings and submissions of Proposals in regard to this RFP must be directed, in writing, by mail, facsimile or e-mail, as applicable, solely to the Pharmacy Benefit Services Procurement Manager. An Offeror's failure to comply with this requirement may result in the Offeror's disqualification from this Procurement.

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239  
Fax: 518-402-2835  
E-mail: [RxBenefit2017RFP@cs.ny.gov](mailto:RxBenefit2017RFP@cs.ny.gov)

Additionally, Offerors and prospective Offerors are strictly prohibited from making any contacts or inquiries concerning the Procurement with any member, officer or employee of any NYS governmental entity other than the Department from the date this RFP is released until the Agreement is approved by OSC subject only to the specific exceptions listed below. Further, any Offeror shall not attempt to influence the Procurement in any manner that would result in a violation or an attempted violation of Public Officers Law sections 73(5) or 74.

c. The following contacts are exempted from the provisions of paragraph 3 of section 139-j and as such do not need to be directed to the Pharmacy Benefit Services Procurement Manager pursuant to section 139-k:

- (1) The submission of written Proposals in response to this RFP;
- (2) The submission of written questions by a method set forth in this RFP when all written questions and responses are to be distributed to all Offerors who have expressed an interest in the Procurement;
- (3) Participation in a demonstration, conference or other means for exchange of information in a setting open to all potential bidders provided for in this RFP;
- (4) Complaints by an Offeror regarding the failure of the Pharmacy Benefit Services Procurement Manager to respond to an Offeror's authorized contacts, when such complaints are made in writing to the Department's Office of the General Counsel, provided that any such written complaints shall become a part of the procurement record;
- (5) Communications by a successful Offeror(s) who has been tentatively awarded a contract and is engaged in communications with the Department solely for the purpose of negotiating the terms of the Agreement after having been notified of tentative award;
- (6) Contact by an Offeror to request the review of a procurement award when done in accordance with the procedure specified in the solicitation document;
  - (a) Contacts by an Offeror in protests, appeals or other review proceedings (including the apparent successful Offeror and its representatives) before the Department seeking a final administrative determination, or in a subsequent judicial proceeding; or

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- (b) Complaints of alleged improper conduct in the Procurement when such complaints are made to the NYS Attorney General, Inspector General, District Attorney, or to a court of competent jurisdiction; or
- (c) Written protests, appeals or complaints to the NYS Comptroller's office during the process of contract approval, where the NYS Comptroller's approval is required provided that the NYS Comptroller shall make a record of such communications and any response thereto which shall be entered into the procurement record pursuant to State Finance Law Section 163; or
- (d) Complaints of alleged improper conduct in a governmental procurement conducted by a municipal agency or local legislative body to the NYS Comptroller's office; and
- (7) Communications between Offerors and governmental entities that solely address the determination of responsibility by a governmental entity of an Offeror.
- d. It is **mandatory** that all prospective Offerors/Offerors complete Part 1 of Exhibit I.K, Procurement Lobbying Offeror's Affirmation of Understanding and Agreement, affirming their understanding of, and agreement to, comply with the procurement lobbying requirements set forth in State Finance Law §139-k and §139-j. A completed Exhibit I.K must be submitted to the Pharmacy Benefit Services Procurement Manager prior to a prospective Offeror making its initial contact with the Department (e.g., attendance at the Pre-Proposal Conference, submission of Exhibit I.J, Notice of Bidding Intention Form, submission of questions, etc., or concurrent with an Offeror's submission of its Proposal, whichever shall occur first). Offerors are advised that whenever any of the Offeror's officers, employees, agents or consultants contact the Department, they should be prepared to provide their name, address, telephone number, place of principal employment, occupation, and whether they were retained, employed or designated, by or on behalf of the Offeror to appear before or contact the Department in regards to this Procurement. To that end and to streamline the process, Offerors are requested to complete and submit Part 2 of Exhibit I.K entitled, Designated Offeror Contact, for each officer, employee, agent or consultant authorized by the Offeror to appear before or contact the Department in regards to this Procurement before appearing or before or at the time such contact is initiated.

Additionally, at the time a Proposal is submitted to the Department, the Offeror is required to provide a completed "Offeror's Certification of Compliance Pursuant to State

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Finance Law §139-k” form. This certification is included as Exhibit I.P of this RFP.

### **3. Notice of Bidding Intention Form**

Filing of this notice is **not** mandatory; however, to assist the Procuring Agencies in better managing the procurement process, prospective Offerors, whether they intend to submit a Proposal in response to this RFP or not, are requested to complete Exhibit I.J, “Notice of Bidding Intention Form” and submit it to the Pharmacy Benefit Services Procurement Manager by the Notice of Bidding Intention Deadline as set forth in Section II.A.1. The completed form may be submitted either in hardcopy, at the address provided in Section II.A.2.b. or electronically to:

[RxBenefit2017RFP@cs.ny.gov](mailto:RxBenefit2017RFP@cs.ny.gov)

On the Notice of Bidding Intention Form, New York State certified Minority and Women- Owned Businesses (M/WBE) may request that their firm’s contact information be included on a list of M/WBE firms interested in serving as a subcontractor for this Procurement.

The listing will be publicly posted on the Procurement webpage at: [www.cs.ny.gov/RxBenefit2017RFP/index.cfm](http://www.cs.ny.gov/RxBenefit2017RFP/index.cfm) for reference by the bidding community. A firm requesting inclusion on this list should send a copy of its NYS M/WBE certification with its completed Notice of Bidding Intention Form. Nothing prohibits an M/WBE vendor from proposing as a prime contractor.

### **4. Pre-Proposal Conference**

A Pre-Proposal Conference will be held on June 22, 2017 at 10:00 a.m. in the OGS Meeting Room 125 - Concourse Level of the Empire State Plaza, Albany, NY. Attendance is not mandatory, but is strongly encouraged for Offerors intending to submit a Proposal.

Each Offeror is requested to send no more than two (2) representatives to the Pre-Proposal Conference. If your organization plans to attend the Pre-Proposal Conference, please notify the Pharmacy Benefit Services Procurement Manager via facsimile or e-mail at the address noted in Section II.A.2.b. at least five (5) business days before the conference with the name and affiliation of each person attending. Information regarding directions to the Empire State Plaza, available parking and security requirements, may be found at: <http://ogs.ny.gov/ESP/CT/plaza.asp>. On the date of the conference, visitors may be required to present photo identification. Prospective Offerors are advised to allow sufficient time to go through security.

**5. Submission of Errors or Omissions in This RFP Document**

By participating in activities related to this Procurement, and/or by submitting a Proposal in response to this RFP, prospective Offerors agree to be bound by its terms, including, but not limited to, this process by which a prospective Offeror may submit errors or omissions for consideration. In the event that a prospective Offeror believes there is an error or omission in this RFP, the prospective Offeror may raise such issue according to the following provisions:

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

- (1) **Time Frame:** Assertions of errors or omissions in the Procurement process that are or should have been apparent prior to the Proposal Due Date must be received by the Department, in writing, five (5) Business Days after the Release Date of Official Responses to Questions specified in Section II.A.1.
- (2) **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.
- (3) **Format of Submission:** All submissions asserting an error or omission must be in writing and submitted to the Pharmacy Benefit Services Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany, NY 12239

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

**"Submission of Errors or Omissions for the  
Pharmacy Benefit Services  
Request for Proposals #RX-2017-1"**

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

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

The Department shall conduct the review process for submission of errors or omissions. The Commissioner may appoint a designee who will review the submission and make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, or the selection decision. At the discretion of the Commissioner, or the Commissioner's designee, the prospective Offeror may be given the opportunity to meet with the Commissioner or the Commissioner's designee, as the case may be, to support its submission. The prospective Offeror may, but need not, be represented by counsel at such a meeting. Any and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner or the Commissioner's designee.

The Commissioner, or the Commissioner's designee, shall review the matter, and the Commissioner shall issue a written decision within twenty (20) business days after the close of the review process. If additional time for the issuance of the decision is necessary, the prospective Offeror shall be advised of the delay and of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the agency's final determination in the matter.

The Department reserves the right to determine and to act in the best interests of the State in resolving any assertion of error or omission in this RFP document. As a consequence of reviewing the assertion, 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 that registered via mail, facsimile or e-mail. Notice of any extension will also be posted to: [www.cs.ny.gov/RxBenefit2017RFP/index.cfm](http://www.cs.ny.gov/RxBenefit2017RFP/index.cfm)

**6. Submission of Questions**

In the event a prospective Offeror has any substantive or procedural questions concerning the content of this RFP document, those questions can be submitted in the following manner.

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

Prospective Offerors may submit questions to the Pharmacy Benefit Services Procurement Manager, in writing, via e-mail, facsimile or mail. The Department strongly urges prospective Offerors to submit the questions via e-mail. Each question should cite the particular RFP section, page number and paragraph number to which it refers. All responses will be considered unofficial until issued or confirmed in writing by the Department on the procurement website. Only those questions due prior to 5:00 p.m. Eastern Time (ET), on the Questions Due Date as shown in Section II.A.1. of this RFP, will be accepted.

To expedite its responses, the Department has provided a question template form which prospective Offerors are requested to use in submitting questions regarding this RFP (see Exhibit I.R, "Question Template").

After the Questions Due Date, the Department will provide to all organizations who have registered, e-mail notification of the posting of all questions received and the Department's Official Responses to said questions. The aforementioned information will be posted to: [www.cs.ny.gov/RxBenefit2017RFP/index.cfm](http://www.cs.ny.gov/RxBenefit2017RFP/index.cfm) and all registered prospective Offerors will be notified of the posting to this site.

## **7. Submission of Proposal**

### **a. Submission Requirements**

The Offeror's Proposal must be organized and separated into three (3) separate parts: Administrative Proposal; Technical Proposal, and Cost Proposal. To facilitate the evaluation process, Offerors must submit eighteen (18) separately bound hard copies (four (4) ORIGINALS and fourteen (14) copies) and two (2) electronic copies (CDs) **of each of the three (3) parts** of the Offeror's Proposal. Electronic submissions must be in



Adobe Acrobat, as applicable. These fifty four (54) documents and six (6) CDs are collectively hereafter referred to as "Submissions."

Each ORIGINAL hard copy of each part must be marked "ORIGINAL," contain original signatures of an official(s) authorized to bind the Offeror to its provisions on all forms submitted that require the Offeror's signature and should be numbered sequentially, i.e., Original #1, Original #2. The remaining fourteen (14) hard copies of each section may contain a copy of the official's signature and should be numbered sequentially (e.g., Copy #1, Copy #2, etc.). Please note that, for each of the three (3) sections, that hard copy marked "Original #1" will be deemed controlling by the Department when viewing the Proposal.

Proposals should be placed and packaged in sealed boxes/envelopes. Each sealed box/envelope should contain a label on the outside which contains the information below.

<p style="text-align: center;"><b>New York State Department of Civil Service</b> <b>Request for Proposals #RX-2017-1</b> <b><u>"Pharmacy Benefit Services"</u></b></p> <p style="text-align: center;"><b>OFFEROR NAME</b> <b>OFFEROR ADDRESS</b></p> <p style="text-align: center;">Indicate content, as applicable <b>ADMINISTRATIVE, TECHNICAL or COST PROPOSAL</b> <b>There must be no cost information included in the Offeror's</b> <b>Administrative Proposal or Technical Proposal.</b></p>
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**All Proposals must be sent to the following:**

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS and FedEx please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division

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Agency Building 1  
Empire State Plaza  
Albany NY 12239

For those Offerors who plan to have the Proposal hand delivered, arrangements for acceptance of the packages must be made in accordance with procurement security procedures. **To make such arrangements, the Department requests that the Offeror notify the Pharmacy Benefit Services Procurement Manager forty-eight (48) 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 II.A.1 of this RFP.** 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.

All Proposals submitted become the property of the Department. Any proposal received after 3:00 p.m. ET on the Proposal Due Date will not be accepted by the Department and may be returned to the submitting entity at the Department's discretion.

The Department will accept amendments and/or additions to an Offeror's Proposal if the amendment and/or addition are received by the Department **prior** to 3:00 p.m. ET on the Proposal Due Date. All amendments to an Offeror's Proposal must be submitted in writing, in accordance with the format set forth in Section II.A.6. of this RFP, and will be included as part of the Offeror's Proposal, if accepted by the Department as provided above.

Offerors are cautioned to verify the content of their Proposal before submission. Except for material received from an Offeror in response to a request by the Department, the Department will not accept amendments or additions to a Proposal if such material is received after 3:00 p.m. ET on the Proposal Due Date. Offerors are encouraged to submit Exhibit I.A, Proposal Submission Checklist, to facilitate verification of Proposal contents. An Offeror's request to withdraw a Proposal after the Proposal Due Date may be considered at the sole discretion of the Department.

**b. Formatting Requirements**

The Administrative Proposal, Technical Proposal and Cost Proposal each should comply with the following formatting requirements (Failure to comply with the formatting requirements herein below may, but will not necessarily, result in the Proposal being deemed non-responsive and may, but will not necessarily, result in rejection of the Proposal):

- (1) **Binding of Proposal:** The Administrative and Technical Proposal must be separate, clearly labeled, and bound as one complete package. The Cost Proposal is required to be separately bound from the Administrative and Technical Proposals, or submitted in a separate sealed envelope, clearly labeled. The official name of the organization(s), the Proposal Due Date and “Pharmacy Benefit Services RFP #RX-2017-1” must appear on the outside front cover of each copy of the package containing the Offeror's Administrative, Technical, and Cost Proposals. If the Proposals are submitted in loose-leaf binders, the official name(s) of the organization(s) and “Pharmacy Benefit Services RFP #RX-2017-1” also must appear on the spine of the binders;
- (2) **Table of Contents:** Each Proposal must include a table of contents;
- (3) **Index Tabs:** Each major Section of the Proposal, each subsection in the Technical Proposal and each Exhibit must be labeled with an index tab that completely identifies the title of the Section, subsection or Exhibit as named in the table of contents;
- (4) **Pagination:** Each page of the Proposal, including Exhibits, must be labeled on the upper right with the Section title and Section reference, page number, and date. Pages within each Section and Exhibit must be numbered consecutively;
- (5) **Proposal Updates/Corrections:** Each Offeror must submit its Proposal so that any update pages required by the Department can be easily incorporated into the Proposal. Should it be necessary for an Offeror to submit additional information in support of its Proposal, it must be submitted in accordance with the following: upon written notification by the Offeror and agreement by the Department, new or replacement pages may be placed in the Proposal. All new or replacement pages will show the date of the revision and indicate the portion of the page being changed. This latter requirement will be fulfilled by drawing vertical lines down both margins of all affected passages. All new/ replacement pages will be noted by the Department on the errata sheet to be placed at the front of the Proposal copy; and,
- (6) **Required Content of Proposals:** The Proposal must consist of three parts: 1) the Administrative Proposal, which must respond to the requirements set forth in Section III of this RFP; 2) the Technical Proposal, which must respond to the requirements set forth in Section IV of this RFP; and 3) the Cost Proposal, which must respond to the requirements set forth in Section V of this RFP.

**c. Material Deviations**

New York State Law prohibits NYS from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in the RFP.

Consequently, each Offeror's Proposal must conform to the specifications, terms, and conditions set forth in this RFP and prospective Offerors are strongly advised to raise issues and/or concerns relating to this Procurement during the question and answer phase rather than taking exceptions within their Proposals. Material deviations from the specifications, terms, and conditions set forth in the RFP may render the Proposal non-responsive and may result in rejection of the Proposal.

In general, a material deviation is one that would (i) impair the interests of NYS, (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 RFP, could have formed a reasonable basis for an otherwise qualified Offeror to change its determination concerning the submission of a Proposal.

Offerors are advised that Offeror's standard, pre-printed material (including but not limited to: product literature, order forms, manufacturer's license agreements, standard contracts or other pre-printed documents), which are physically attached or summarily referenced in the Offeror's Proposal, unless specifically required by the RFP to be submitted as part of the Offeror's Proposal, will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Offeror for informational or promotional purposes only.

In order to be deemed responsive to this RFP, the Offeror must submit a Proposal which independently satisfies all of the requirements set forth in this RFP, without substitution or modification ("stated requirements"). The Proposal will be evaluated against the requirements and specifications set forth in this RFP to determine the "best value" submission.

As stated above in part, New York State Law prohibits NYS from awarding a contract based upon material deviations from the specifications, terms, and conditions set forth in the RFP. Consequently, each Offeror's Proposal must conform to the specifications, terms, and conditions set forth in this RFP. In addition to, but not in lieu of, its response to the RFP's stated requirements, the Offeror may propose supplemental, "or equal", additional or alternative terms (Extraneous Terms) to the stated requirements within the

Proposal, provided that, in the State's sole judgment, the Extraneous Term(s) does not constitute material deviations to the stated requirements. Proposed Extraneous Term(s) may only be considered by the State to the extent that such Extraneous Term(s) constitute non-material deviations from the requirements set forth in the RFP as determined in the Department's sole discretion. Material deviations from the specifications, terms, and conditions set forth in the RFP may render the Proposal non-responsive and may result in rejection of the Proposal.

Therefore, in order for Extraneous Term(s) to be considered, the Extraneous Term must:

- (1) Independently satisfy the applicable requirement(s) of the RFP on its own merits;
- (2) Be clearly and separately identified as an "Extraneous Term" within the Administrative, Technical and/or Cost Proposals - Extraneous Terms Submission; and
- (3) Be separately evaluated and scored in accordance with the bid evaluation criteria.

If the Offeror proposes to include Extraneous Terms in its official Proposal, the Offeror must meet all of the following requirements:

- (a) Each proposed Extraneous Term must be specifically enumerated in a separate section of the applicable Submission(s) (Administrative, Technical and/or Cost) labeled "Extraneous Terms Submission," using the format as set forth in Exhibit I.I entitled, Extraneous Terms Template.
- (b) The "Extraneous Terms" section must be in writing prepared by the Offeror and may not include any pre-printed literature or vendor forms;
- (c) The writing must identify by part, section and title the particular RFP requirement (if any) which the Offeror proposes to supplement by inclusion of the Extraneous Term, with a brief description of the specific provision being modified by the Extraneous Term; and
- (d) The Offeror shall enumerate the proposed additional or alternative term from the RFP requirement, and the reasons therefore.

Only those terms meeting the above requirements (a) through (d) shall be considered as having been submitted as part of the formal offer.

Extraneous Term(s) submitted on standard, pre-printed forms (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 Proposal, or that, in the State's sole judgment, have not been submitted in compliance with the above requirements (a) through (d) above, will not be considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Proposal, but rather will be deemed by the State to have been included by Offeror for informational or promotional purposes only.

Absent the State's express written acceptance and incorporation of an Extraneous Term, acceptance and/or processing of the Proposal shall not constitute the State's acceptance of Extraneous Term(s) or be deemed a waiver of the State's rights set forth herein.

**8. Notification of Award**

A proposed award notification letter will be sent to the selected Offeror indicating a conditional award subject to successful contract negotiations. The remaining Offerors will be notified of the conditional award and the possibility that failed negotiations could result in an alternative award. No public discussion or news releases relating to this RFP, the associated Procurement process, including but not limited to the bid solicitation, proposal evaluation and award and contract negotiation processes or the Agreement shall be made by any Offeror or their agent without the prior written approval of the Department.

**9. Debriefing**

As stated in Section II.A.8 of this RFP, proposed award notification letters will be sent to the selected and nonselected Offerors. At that time, Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made, dependent upon the nature of the Debriefing, i.e., pre-award or post-award. Debriefings are subject to the Department's Debriefing Guidelines which are set forth in Exhibit I.H. entitled, NYS Department of Civil Service Debriefing Guidelines. An unsuccessful Offeror's written request for a debriefing shall be submitted in the following manner.

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service

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Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

**10. Submission of Award Protests**

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 protests of the selection award for consideration. In the event that an Offeror decides to protest the selection decision, the Offeror may raise such issue according to the following provisions.

**a. Process for Submitting Post Award Protests of the Selection Decision**

- (1) **Time Frame:** Any protest of the selection decision must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of a conditional award.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** The protest must be in writing and submitted to the Pharmacy Benefit Services Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

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A protest of the selection decision must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Selection Protest for  
Pharmacy Benefit Services RFP #RX-2017-1”**

**b. Process for Submitting Non-Responsive Determination Protest**

- (1) **Time Frame:** Any protest of a non-responsive determination must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of the non-responsive determination.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- (3) **Format of Submission:** All protest must be in writing and submitted to the Pharmacy Benefit Services Procurement Manager in the following manner.

If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

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Empire State Plaza  
Albany NY 12239

A protest of the non-responsive determination must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for  
Pharmacy Benefit Services RFP #RX-2017-1”**

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.



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**c. Review of Submitted Protests**

The Department shall conduct the review process of submitted protests. The Department's Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, the non-responsive determination, or the selection decision or the non-responsive determination. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or her designee, as the case may be, 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 and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee. The Commissioner, or the Commissioner's designee, shall review the matter, and shall issue a written decision within twenty (20) business days after the close of the review process. If additional time is necessary for the issuance of the decision, the Offeror shall be advised of the time frame within which a decision may be reasonably expected. The Commissioner's decision will be communicated to the party in writing and shall constitute the Department's final determination in the matter.

In the event that an Offeror protests the selection decision or the non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the agreement with the selected Offeror.

The Department reserves the right to determine and to act in the best interests of the State in resolving any selection or non-responsive determination protest.

**b. Process for Submitting Non-Responsive Determination Protest**

- (1) **Time Frame:** Any protest of a non-responsive determination must be received no later than ten (10) Business Days after an Offeror's receipt of written notification by the Department of the non-responsive determination.
- (2) **Content:** The protest must fully state the legal and factual grounds for the protest and must include all relevant documentation.
- (4) **Format of Submission:** All protest must be in writing and submitted to the Pharmacy Benefit Services Procurement Manager in the following manner.

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If using the U.S. Postal Service, please use the following address:

Pharmacy Benefit Services Procurement Manager  
Employee Benefits Division, Room 1106  
NYS Department of Civil Service  
Albany, New York 12239

For all other carriers including couriers, UPS, and FedEx, please use the following address:

Pharmacy Benefit Services Procurement Manager  
NYS Department of Civil Service  
Employee Benefits Division  
Agency Building 1  
Empire State Plaza  
Albany NY 12239

A protest of the non-responsive determination must have the following statement clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for  
Pharmacy Benefit Services RFP #RX-2017-1”**

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The Department shall conduct the review process of submitted protests. The Department's Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this RFP, the evaluation of Proposals, the non-responsive determination, or the selection decision or the non-responsive determination. At the discretion of the Commissioner, or the Commissioner's designee, the Offeror may be given the opportunity to meet with the Commissioner or her designee, as the case may be, 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 and all issues concerning the manner in which the review process is conducted shall be determined solely by the Commissioner, or the Commissioner's designee. The Commissioner, or the Commissioner's designee, shall review the matter, and shall issue a written decision within twenty (20) business days

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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.

In the event that an Offeror protests the selection decision or the non-responsive determination, the Department shall continue contract negotiations regarding the terms and conditions of the agreement with the selected Offeror.

The Department reserves the right to determine and to act in the best interests of the State in resolving any selection or non-responsive determination protest.

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

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

- a. Make or not make an award under the RFP, either in whole or in part.
- b. Prior to the bid opening, amend the RFP. If the Department elects to amend any part of this RFP, notification of the amendment will be provided to all prospective Offerors who submitted a **“Procurement Registration Form”** and/or a **Procurement Lobbying Offeror's Affirmation of Understanding and Agreement, (Exhibit I.K.)** via e-mail, facsimile or mail. Any amendments will also be posted to: [www.cs.ny.gov/RxBenefit2017RFP/index.cfm](http://www.cs.ny.gov/RxBenefit2017RFP/index.cfm).
- 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, at the Department's sole discretion, 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 fail 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 arithmetic or other 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, at its sole discretion;
  - 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, management interviews, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this RFP;
  - o. Negotiate with the successful Offeror within the scope of this RFP in the best interests of the Department;
  - p. Utilize any and all ideas submitted in the Proposal(s) received;
  - q. Conduct contract negotiations with the next responsible bidder, should the Department be unsuccessful in negotiating with the selected Offeror;
  - r. Unless otherwise specified in this RFP, every offer is firm and not revocable for a minimum period of three hundred sixty-five (365) days from the Proposal Due Date as set forth in the RFP; and

- s. Any Offeror whose Proposal might become eligible for a conditional award in the event that the intended selection is disqualified may be asked to extend the time for which their Proposal shall remain valid.

## **12. Limitation of Liability**

The Department is not liable for any cost incurred by any Offeror prior to approval of the Agreement 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 exhibits, website exhibits, and sample document exhibits). However, the Department does not warrant the accuracy of the data; the numbers or statistics which appear in hardcopy exhibits, website exhibits, and sample document exhibits referenced throughout this RFP which 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 Proposals at their own discretion.

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

This Procurement is being conducted in accordance with, and is subject to, the competitive bidding laws of the State of New York (New York State Finance Law, Article 11) and it is governed by, at a minimum, the legal authorities referenced below. All Offerors must fully comply with the provisions and set forth in this Section II.B. of this RFP. The Department will consider for evaluation and selection purposes only those Offerors who agree to comply with these provisions whose Proposal contains the Statements, Formal Certifications, and Exhibits submissions required.

### **1. 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 New York State law, rules and regulations, and policy establishing ethical standards for current and former State employees. In signing its Proposal, each Offeror guarantees knowledge and full compliance with such provisions for purposes of this RFP and any other activities including, but not limited to, contracts, bids, offers, and negotiations. Failure to comply with these provisions may result in disqualification from the Procurement process, termination, suspension or cancellation of the Agreement and criminal proceedings as may be required by law. Per Section III.C of this

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RFP, Offerors 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 Exhibit I.M, Compliance with Public Offers Law Requirement **and** Exhibit I.X, Vendor Assurance of No Conflict of Interest or Detrimental Effect in the Offeror's Administrative Proposal.

**2. Omnibus Procurement Act of 1994 and its 2000 Amendment**

Offerors are hereby notified that, if their principal place of business is located in a foreign or domestic jurisdiction that penalizes New York State vendors, and if the goods or services they offer would be produced or performed substantially outside New York State, the Omnibus Procurement Act of 1994 and its 2000 amendments require that they be denied contracts which they otherwise could obtain. The list of jurisdictions subject to this provision is set forth in Article 20 of Appendix A.

**3. Contractor Requirements and Procedures for business participation opportunities for New York State Certified Minority-and-Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

**NEW YORK STATE LAW**

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

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Department hereby establishes an overall goal of 0.05 percent for MWBE participation. A separate MWBE participation goal of 0 percent has been established for the performance of the NYSIF contract. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that the Department may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on

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how the Department will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

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

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and the Department may withhold payment as liquidated damages.

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

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

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

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Department for review and approval. (Exhibit I.O)
- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the

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Department via the address outlined previously in Section II.A.2.b of this document, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, the Department shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

The Department may disqualify a respondent as being non-responsive under the following circumstances:

- a. If a respondent fails to submit an MWBE Utilization Plan;
- b. If a respondent fails to submit a written remedy to a notice of deficiency;
- c. If a respondent fails to submit a request for waiver; or
- d. If the Department determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Department, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance and Payment Report to the Department, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

## **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

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



have opportunities for maximum feasible participation in the performance of the Departments' contracts.

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

For purposes of this procurement, the Department conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <http://ogs.ny.gov/Core/SDVOBA.asp>

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

### **Equal Employment Opportunity Requirements**

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

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The respondent will be required to submit Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statements, Appendix D-1 (DCS) and Appendix D-1 (NYSIF), to the Department with its bid or proposal.

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

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

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

**4. Americans with Disabilities Act**

The Contractor will be required to assure its compliance with the Americans with Disabilities Act (42 USC§12101 et. seq.), in that any services and programs provided during the course of performance of the Agreement shall be accessible under Title II of the Americans with Disabilities Act, and as otherwise may be required under the Americans with Disabilities Act by submitting a completed Compliance with Americans with Disabilities Act form, Exhibit I.N, in the Offeror's Administrative Proposal.

**5. MacBride Fair Employment Principles Act & Non-Collusive Bidding Certification**

In accordance with Chapter 807 of the Laws of 1992, Offerors must certify whether they or any individual or legal entity in which the Offeror holds a ten percent (10%) or greater ownership interest, or any individual or legal entity that holds a ten percent (10%) or greater ownership in the Offeror have business operations in Northern Ireland. If an Offeror does have business operations in Northern Ireland, they must certify that they are taking lawful steps in good faith to conduct such business operations in accordance with the MacBride Fair Employment Opportunity Principles relating to nondiscrimination in employment and

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freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such principles.

The Department also requires that Offerors certify that prices in their Proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition with any other Offeror or competitor. In addition, that unless required by law, the prices quoted in the Offeror's Proposal have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, directly, indirectly, to any other Offeror or to any competitor. Offerors must also certify that no attempt has been made or will be made by the Offeror to induce any person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition. An executed copy of the combined Exhibit I.D, MacBride Act Statement Form and Non-Collusive Bidding Certification, is required to be submitted in the Offeror's Administrative Proposal.

6. **Vendor Responsibility Requirements – State Finance Law §163**

New York State Finance Law §163 requires contracts for services and commodities be awarded on the basis of lowest price or best value “to a responsive and responsible Offeror.” Furthermore, §163(9)f requires the Department to make a determination of responsibility of the proposed Contractor prior to making an award.

To assist the Department in evaluating the responsibility of Offerors, a completed “New York State Standard Vendor Responsibility Questionnaire” must be submitted in the Offeror's Administrative Proposal. A person legally authorized to represent the Offeror must execute the questionnaire. To the extent that the Contractor is proposing the use of Key Subcontractors or Affiliates (i.e., part of the Offeror's proposed Account Team) and expected to receive more than \$100,000 in payments during the term of the Agreement, the Offeror must submit a completed “New York State Standard Vendor Responsibility Questionnaire” for each Key Subcontractor or Affiliate completed by a person legally authorized to represent the Key Subcontractor or Affiliate.

The Department recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System; however, vendors may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at: [http://www.osc.state.ny.us/vendrep/vendor\\_index.htm](http://www.osc.state.ny.us/vendrep/vendor_index.htm) or go directly to the VendRep System online at: <https://portal.osc.state.ny.us>.

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Vendors must provide their New York State Vendor Identification Number when enrolling.

To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at: [itservicedesk@osc.state.ny.us](mailto:itservicedesk@osc.state.ny.us).

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form.

#### **7. Tax Law Section 5-a Certification Regarding Sales and Compensating Use Taxes**

Section 5-a of the New York Tax Law requires that any contract valued at more than \$100,000 entered into by a State agency shall not be valid, effective, or binding against the agency unless the Contractor certifies to the Tax Department that it is registered to collect New York State and local sales and compensating use taxes, if the Contractor made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, the Contractor must certify to the Tax Department that each affiliate and subcontractor of such Contractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. For the purpose of this requirement, "affiliate" means a person or organization which, through stock ownership or any other affiliation, directly, indirectly, or constructively controls another person or organization, is controlled by another person or organization, or is, along with another person or organization, under the control of a common parent. The Contractor also must certify to the procuring state entity that it filed the certification with the Tax Department and that the certification is correct and complete. Accordingly, in the event the value of the Agreement exceeds \$100,000, the Contractor must file a properly completed Form ST-220-CA, Exhibit I.E, with the Department and a properly completed Form ST-220-TD, Exhibit I.F, with the Department of Taxation & Finance before the Agreement may take effect. In addition, after the Agreement has taken effect, the Contractor must file a properly completed Form ST-220-CA with the Department if the Agreement's term is renewed. Further, a new Form ST-220-TD must be filed with the Department of Taxation & Finance if no Form ST-220-TD has been filed by the Contractor or if a previously filed Form ST-220-TD is no longer correct and complete.

Submission of these forms (ST-220-CA and ST-220-TD) is **NOT** required at time of Proposal submission however, the selected Offeror will be required to complete and submit

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these forms as a condition of contract award. These forms may also be found at:

[http://www.tax.ny.gov/forms/sales\\_cur\\_forms.htm](http://www.tax.ny.gov/forms/sales_cur_forms.htm)

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

**NOTICE TO OFFEROR'S 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 NYS agencies interested in the provision of the subject services including, but not limited to, the Governor's Office of Employee Relations and the Division of the Budget, 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.

To request that materials be protected from FOIL disclosure, the Offeror must follow the procedures below regarding the New York State Freedom of Information Law (FOIL). If an Offeror believes that any information in its Proposal or supplemental submission(s) constitutes proprietary and/or trade secret information and desires that such information not be disclosed if requested pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the Offeror must make that assertion by completing Exhibit I.C, Freedom of Information Law – Request for Redaction Chart. 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 Exhibit I.C contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, summary allegations that material is proprietary or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed Exhibit I.C **must** be submitted to the Department at the time of its Proposal submission; it should be included with the Requested Redactions (CD 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 Exhibit I.C and submitting it to the Department at the time of its Proposal submission, but separately from its Proposal. If a completed Exhibit I.C form is not submitted,

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the Department will assume that the Offeror chooses not to assert that any proposal material or supplemental submission, as applicable should be protected from FOIL disclosure.

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

**Requested Redactions (CD and Hard Copy):**

At the time of Proposal submission, the Offeror is required to identify the portions of its Proposal that it is requesting to be redacted, in accordance with the instructions below, to be used in the event that its Proposal is the subject of a Freedom of Information Law (FOIL) request received by the Department:

The Offeror must provide an electronic copy of the Administrative Proposal, the Cost Proposal and the Technical Proposal, each on a separate CD, which reflect the Offeror's requested redactions. Additionally, the Offeror must provide a separately bound hardcopy of each of the three (3) Proposal documents with redactions marked that are included on the CDs. The electronic documents must be prepared in PDF format using the Redaction Function in Adobe Acrobat Professional software, version 8 or higher. Each specific portion of the Proposal documents requested to be protected from FOIL disclosure must be identified using the Adobe **"Mark for Redaction" function; do not use the "Apply Redactions" function**. The resulting documents must show the Offeror's requested redactions as outlined, while the content remains visible. This will allow the Department to either apply or remove requested redactions when responding to FOIL requests. The documents included on the CD and in hard copy must be complete Proposals, including all Exhibits and Attachments. No section may be omitted from the CD or hard copy even if the entire section is requested to be redacted; such sections should be marked for redaction, not removed. For forms, exhibits and charts please mark for redaction only those cells/fields/entries that meet the criteria for protection from FOIL, not the entire page.

During the Proposal evaluation process, the Department may request additional information through clarifying letters and at management interviews. 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.

**9. Compliance with New York State Workers' Compensation Law**

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

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

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

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

#### **10. Iran Divestment Act**

By submitting a Proposal in response to this solicitation or by assuming the responsibility of a contract awarded hereunder, Offeror/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Offeror/Contractor is advised that should it seek to renew or extend an Agreement awarded in response to the solicitation, it must provide the same certification at the time the Agreement is renewed or extended.

During the term of the Agreement, should the Department of Civil Service receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Department of Civil Service will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Civil Service shall take

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such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department of Civil Service reserves the right to reject any Proposal, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

#### **11. New York Subcontractors and Suppliers**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in New York State, Offerors for this contract for Pharmacy Benefit Services or are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Offerors need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in utilizing services and technology. Furthermore, Offerors are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

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

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Offerors to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers. Offerors are required to complete Exhibit I.U.2, NYS Subcontractors and Suppliers.