



INVITATION FOR BIDS

ENTITLED:

Employee Benefit Card (EBC)

RELEASE DATE:

June 12, 2024

BID SUBMISSION DUE DATE:

August 14, 2024

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

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

George Powers
New York State Department of Civil Service
Attn: Office of Financial Administration,
Empire State Plaza, Swan Street Building – Core 1
Albany, New York 12239

DCSprocurement@cs.ny.gov

Timothy R. Hogues
Commissioner
NYS Department of Civil Service

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Director
Employee Benefits Division

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SECTION 1: INTRODUCTION

1.1 Timeline of Key Events

EVENT	DATE
Issuance of Invitation for Bid	June 12, 2024
Deadline for Submission of <i>Offeror Affirmation of Understanding and Agreement</i> (Attachment 1)	See below*
Deadline for Submission of Offeror Questions	June 26, 2024, 4:00 p.m. ET
Responses to Written Questions Posted	July 17, 2024
Deadline for Submission of Bids	August 14, 2024, 3:00 p.m.
Anticipated OSC Approval of Contract Award and Commencement of Implementation Period (Contract Start Date)	January 1, 2025
Anticipated Project Services Start Date	June 1, 2025**

*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 Contacts identified in Section 2 of this IFB.

**The June 1, 2025, Anticipated Project Services Start Date allows for a 60-day Implementation Period. Production and Distribution of EBCs is anticipated to begin on June 1, 2025.

1.2 Purpose

The purpose of this Invitation for Bids (IFB), entitled "Employee Benefit Card" is to competitively secure the services of a qualified organization (Offeror), either directly or through subcontracts with qualified organizations, to provide comprehensive Project Services set forth in detail in Section 3 of this IFB, on behalf of the New York State Department of Civil Service ("Department" or "DCS"), for individuals covered under The Empire Plan. Capitalized terms used herein shall have the meanings specified in the *Glossary of Defined Terms* (Attachment 15) or in the body of this IFB. If there is a conflict in a definition the body of the IFB will control.

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

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

1.3 Period of Performance

It is the intent of the Department to enter into an Agreement for a term consisting of an Implementation Period of a minimum of 60 days, plus five (5) years of Project Services

which shall begin on the Project Services Start Date (Services Start Date), and end on May 31, 2030.

The estimated “Project Services Start Date” is June 1, 2025, or 60 Days after OSC approves the Contract, whichever is later, and continue through and including May 31, 2030 (End Date).

The Parties may agree to a shorter Implementation Period if such change best meets the needs of the State.

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).

1.4 Overview of the New York State Health Insurance Program

The New York State Health Insurance Program (NYSHIP) was established by the New York State Legislature in 1957 to provide essential health insurance protection to New York State (NYS) employees, retirees, and their eligible Dependents. Civil Service Law allows the NYSHIP the option to be self-funded, which occurred in 2014. Public authorities, public benefit corporations, and other quasi-public entities, such as the NYS Thruway Authority and the Dormitory Authority may choose to participate in NYSHIP; those that do are called Participating Employers (PEs). Article XI of the NYS Civil Service Law also allows local units of government such as school districts, special districts, and municipal corporations to participate in NYSHIP; those local government units which choose to participate in NYSHIP are called Participating Agencies (PAs). At present, there are roughly 100 Participating Employers and about 800 Participating Agencies in NYSHIP. Under Article XI of the Civil Service Law, as amended and 4 New York Code of Rules and Regulations (NYCRR) Part 73, as amended, the President, who also serves as the Commissioner of the Department, through the Department’s Employee Benefits Division (EBD) is responsible for the ongoing administration of NYSHIP. NYSHIP currently covers over 625,000 NYS, PA and PE Employees and Retirees. Eligible covered Dependents bring the total number of covered lives to about 1,211,000.

1.5 Overview of The Empire Plan

The largest health plan option under NYSHIP is The Empire Plan, a Participating Provider Organization (PPO) which is available to New York State employees and retirees, PAs, and PEs. The Empire Plan benefit design has four (4) main parts including:

1. Hospital Program benefits that include coverage for hospital inpatient stays, hospice care, emergency care, skilled nursing facilities, infertility services and the Transplants Program. The program is currently administered by Anthem Blue Cross;

2. Medical Program benefits that includes coverage for medical and surgical services under the Participating Provider and the Basic Medical Program. This program is currently administered by UnitedHealthcare Insurance Company (UHC) of New York;
3. Mental Health and Substance Use Program benefits currently administered by Carelon Behavior Health; and
4. Prescription Drug Program benefits that include coverage for prescription drugs dispensed through retail network pharmacies, through the Mail Service Pharmacy Process, through the Specialty Pharmacy Program, and through non-network pharmacies. This program is currently administered by CVS Caremark.

The benefit design of The Empire Plan is the result of collective bargaining between NYS and the various unions representing its employees. Benefits are administratively extended to non-represented NYS employees, employees of PAs and PEs, and retirees. Therefore, the benefit design is subject to change from time-to-time as the result of those negotiations, and there are variations in The Empire Plan's benefit design among the bargaining units. The benefit design cannot deviate from that which has been collectively bargained. Most of the active workforce is represented by various unions, and union participation in the design and oversight of NYSHIP is active and ongoing.

Other NYSHIP Options

Other plan options available to New York State and PE employees include eight (8) Health Maintenance Organizations (HMOs). The Excelsior Plan is a lower cost version of The Empire Plan available only to PAs but will no longer be a NYSHIP offering effective January 1, 2025. Lastly, the Student Employee Health Plan (SEHP) is a health insurance plan for graduate student employees of the New York State and New York City University systems. Benefit cards for the HMOs and SEHP will not be required under this contract.

NYSHIP Governance

NYSHIP is sponsored by the Council on Employee Health Insurance (CEHI). The Council is composed of the President of the Civil Service Commission, the Director of the Office of Employee Relations (OER), and the Director of the Division of the Budget (DOB). The Department holds the contracts with the DCS Programs third party administrators. All components of the DCS Programs are self-funded.

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

The EBC, which will be produced and distributed by the selected Offeror on behalf of the Department, provides identifying information for an enrollee and any covered dependents enrolled in The Empire Plan. Once a week the Department produces an EBC Data File(s) containing all the information necessary to produce and distribute EBCs. Using the

information contained in the EBC Data File(s), the selected Offeror will be required to produce and distribute the EBCs via first-class U.S. Postal Service to the cardholder.

The total number of Empire Plan benefit cards issued in the form of new, duplicate and replacement cards over the last three calendar years is as follows: 2021: 964,294; 2022: 963,966; and 2023: 953,606. The number of cards issued in an average week in calendar year 2023 was approximately 2,500.

In addition, each year the federal Patient Protection and Affordable Care Act sets new amounts limiting total network out-of-pocket costs. This federal law requires the inclusion of annual out-of-pocket costs on employee health insurance benefit cards. For years 2021, 2022, and 2023, the Department reissued approximately 839,000 cards per year due to the federal legislative requirement. The actual counts of cards reissued in bulk for 2021, 2022, and 2023 are as follows: 859,980; 829,583; and 828,535, respectively. The Department anticipates issuing new Empire Plan benefit cards for all enrollees and covered dependents beginning in mid-November of each year of the five-year contract. New benefit cards will also be issued when there is a change to annual out-of-pocket costs due to collective bargaining.

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

1.7 Minimum Offeror Eligibility Requirements

Offerors must meet the following Minimum Offeror Eligibility Requirements to be eligible to submit a Bid Submission. Failure to meet these Minimum Offeror Eligibility Requirements will result in a Bid Submission being found non-responsive and eliminated from consideration.

Offeror means any responsible and eligible entity submitting a responsive Bid Submission to this IFB. It shall be understood that references in the IFB to "Offeror" shall include said entity's proposed Key Subcontractor or Affiliates, if any. The Department requests bids only from qualified Offerors, as specified below.

1. The Offeror must, at time of Bid Submission, possess the legal capacity to enter into a contract with the Department.

2. The Offeror must, at time of Bid Submission, be authorized to conduct business in NYS, or, if the Offeror is not so authorized at time of Bid Submission Due Date, then the Offeror must, at time of Bid Submission Due Date, have filed an application for authority to do business in NYS with the New York State Secretary of State. Such application must be approved prior to Contract Award. (For details concerning this requirement, refer to: <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 Contractor 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 Bid Submission, it has completed, obtained, or performed all registrations, filings, approvals, authorizations, consents, and examinations required by any governmental authority for the provision of the delivery of Project Services (as detailed in Section 3 of this IFB) and agree that it will comply with any requirements imposed upon it by law.
4. The Offeror must have, at time of Bid Submission, at least two current or former clients, each with a card production size of at least one hundred thousand (100,000) in the last twelve-month period prior to bid submission.
5. The Offeror must represent and warrant that, at time of Bid Submission, it possesses adequate staffing resources, financial resources, and organizational capacity to perform the type, magnitude and quality of work specified in the IFB.
6. The Offeror must have, at time of Bid Submission, at least three years prior experience, within the past five years (2020-2024), producing and distributing Employee Benefit Cards that are similar to those specified in the *Employee Benefit Card Specifications* (Exhibit 1); and have produced a minimum of one million Employee Benefit Cards in a twelve-month period within those past five years (2020-2024).

1.8 Entirety of Resulting Contract; Conflict of Documents and Clauses

The Contract resulting from this solicitation shall be deemed inclusive of the following documents. Only documents expressly mentioned below shall be deemed a part of the resulting Contract, unless DCS in its sole discretion determines otherwise. Conflicts between the documents shall be resolved in the following order of precedence:

- A. Appendix A – (Standard Clauses for New York State Contracts), dated June 2023;
- B. Any Amendments to the body of the Contract;
- C. The Contract body and other writing(s) setting forth the final agreements, clarifications, and terms between the IFB and Contractor's Bid. Clarifications must be specifically noted in writing as to what was offered by the Contractor and what

was accepted by the State. If not, such clarifications shall be considered last in the order of precedence;

- D. Appendix B – (Standard Clauses for all Department Contracts), dated March 2024;
- E. Appendix C – (New York State Department of Civil Service Information Security Requirements), dated March 2024;
- F. Appendix E – Insurance Requirements;
- G. Department’s Official Response to Questions from the Offerors;
- H. This IFB including any Addenda (other than Appendix A, B, C, and E);
- I. Contract Fee Schedule for Project Services; and
- J. Selected Contractor’s Bid or Proposal, including any clarifications resulting from Demonstrations, Management Interviews or Department Requests for Clarifications and Contractor’s responses.

SECTION 2: PROCUREMENT PROTOCOL AND PROCESS

This Procurement is subject to the New York State competitive bidding laws and also governed by, at a minimum, the legal authorities referenced below. An Offeror must fully comply with the provisions set forth in this section of the IFB, as well as the provisions of Appendix A - the Standard Clauses for New York State Contracts which will become part of the resulting Contract. An Offeror must also comply with the provisions of Appendix B - the Standard Clauses for All Department Contracts, Appendix C - Information Security Requirements, and Appendix E – Insurance Requirements, subject to Department approved non-material bid deviations, which will also 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.

The following administrative information will apply to this IFB. Failure to comply fully with the following information may result in disqualification of your Bid Submission.

This IFB outlines the terms and conditions and all applicable information required for submission of a Bid. Proposers should pay strict attention to the Deadline for Submission of Bids in Section 1.1 (Timeline of Key Events) to prevent disqualification. To ensure compliance with these requirements and to prevent possible disqualification, Proposers should follow the format and instructions contained in this document.

Attachment 7, Offeror Certifications Form, contains information that is required to be certified and impacts the entire procurement process. Offerors are encouraged to read and understand these attestations as a first step in this IFB.

2.1 Rules Governing Conduct of Competitive Procurement Process

All inquiries, questions, filings, and submission of Bids in regard to the IFB must be directed in writing to the Designated Contact listed below. Bids may not be submitted by e-mail or facsimile. Any inquiries, questions, filings, or Bids 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,
Empire State Plaza, Swan Street Building – Core 1
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 IFB. Staff is required to obtain certain information from an Offeror whenever contacted about the procurement during the restricted period and is required to make a determination of the Offeror's responsibility that addresses the Offeror's compliance with the statutory requirements. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Offeror is debarred from obtaining governmental Procurement Contracts. The Department's policy and procedures can be found in the Attachment 2, Procurement Lobbying Policy. 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. Pre-Bid Conference

No Pre-Bid Conference will be held regarding this IFB.

4. Submission of Errors or Omissions in this IFB Document

By participating in activities related to this IFB, and/or by submitting a Bid in

response to this IFB, an Offeror agrees to be bound by its terms, including, but not limited to, this process by which an Offeror may submit errors or omissions for consideration. If an Offeror believes there is an error or omission in this IFB, the Offeror may raise such issue as follows:

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

- i. **Time Frame:** The Department must receive assertions of errors or omissions in the IFB process which are or should have been apparent prior to the Bid Submission Due Date, in writing, five (5) Business Days after the Release Date of First Official Responses to Questions specified in Section 1.1 of this IFB.
- 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 submitted in writing *both* electronically and in hard copy format to the Designated Contact specified in Section 2.1 of this IFB.

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

**"Submission of Errors or Omissions for the
Employee Benefit Card (EBC) Invitation for Bids"**

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

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

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

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

The Department reserves the right to determine and act in the best interests of the State in resolving any assertion of error or omission in this IFB document. The Department may elect to extend the Bid Submission 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/EBC/IFB/>.

5. Submission of Questions

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

[**Note:** See below Section 6(b) with regard to submission of Bid Deviations.]

6. Submission of Bid

The Department has provided a *Bid Submission Checklist* (Attachment 13) to assist with organizing your Bid Submission. Each Offeror must submit its Bid Submission in accordance with the method outlined below.

The Offeror's Bid Submission must be organized and separated into three separate sections: Administrative Submission; Technical Submission; and Financial Submission. To facilitate the evaluation process, an Offeror must follow the submission requirements described below. Electronic USB devices must conform to the technical specifications outlined in Section 2 of this IFB and shall be included on unprotected Microsoft Windows formatted USB 2.0 or higher storage drive.

Additionally, the electronic USB devices must be in Adobe Acrobat PDF searchable format to allow for searchable and selectable text.

a. Administrative & Technical Submissions

- i. Hard Copies (3 Total): One (1) ORIGINAL hard copy and two (2) additional hard copies which include separate versions of the Administrative and Technical Submissions. The ORIGINAL hard copy of the Administrative and Technical Submissions 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 the Administrative and Technical Submissions should 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).
- ii. Electronic USB Devices (2 Total): The Offeror must submit two (2) electronic USB devices which each contain an electronic copy of the Administrative and Technical Submissions ONLY. Each of the two (2) electronic USB Devices should be externally labeled by submission and uniquely designated with a number (e.g., "TECHNICAL & ADMINISTRATIVE COPY 1", "TECHNICAL & ADMINISTRATIVE COPY 2, etc."). The two (2) electronic USB devices that contain only the Administrative and Technical Submissions should be packaged in a sealed box/envelope labeled Administrative and Technical Submissions.

b. Financial Submission

- i. Hard Copies (2 Total): One (1) ORIGINAL hard copy and one (1) additional hard copy of the Financial Submission of the IFB (labeled COPY #1).
- ii. Electronic USB Devices (2 Total): The Offeror must submit two (2) electronic USB devices which each contain an electronic copy of the Financial Submission ONLY.

c. Master Electronic Submission

- i. Electronic USB Device (1 Total): A master electronic submission containing all of the ORIGINAL hard copy Submissions (Administrative, Technical, & Financial) must be provided on a master electronic USB device. The master electronic submission must be clearly labeled by Submission and identified (e.g., "Master Copy of Administrative, Technical, & Financial Submission). In situations where the submission content differs between the

ORIGINAL bound hard copies and the master electronic submission; the master electronic submission is deemed controlling. The USB device containing the master electronic submission should be inserted in the Financial Submission box.

- d. Each Submission must include a table of contents.
- e. Each major section of the Submission, 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.
- f. Each page of the Submission (both the hard copies and the electronic submissions on USB devices), including attachments, must be dated, and numbered consecutively.
- g. Submissions should be placed and packaged together, by section, in sealed boxes/envelopes (i.e., all Administrative Submissions in one box, all Technical Submissions in a second box, and all Financial Submissions 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 of this IFB.

**New York State Department of Civil Service
Invitation Bids
“Employee Benefit Card”**

**OFFEROR NAME
OFFEROR ADDRESS**

Indicate content, as applicable

**ADMINISTRATIVE, TECHNICAL, or FINANCIAL SUBMISSION
There must be no Financial/cost information included in the Offeror’s
Administrative Submission or Technical Submission.**

- h. All Bid Submissions must be mailed or hand-delivered to the address provided in Section 2.1(1) of this IFB. To make arrangements for hand-delivery, the Offeror must notify the Designated Contact twenty-four hours prior to delivery. All Submissions must be received by 3:00 p.m. ET on the Bid Submission Due Date as set forth in Section 1.1 of this IFB.
- i. Any submission received after 3:00 p.m. ET on the Bid Submission Due Date, as specified in Section 1.1 of this IFB, shall not be accepted by the Department, and may be returned to the submitting entity at the

Department's discretion. All Bid Submissions submitted become the property of the Department.

- j. The Department will accept amendments and/or additions to an Offeror's Bid Submission if the amendment and/or addition is received by the Bid Submission Due Date and time. All amendments to an Offeror's Bid Submission must be submitted in accordance with the format set forth in this Section 2.1(6) of this IFB and will be included as part of the Offeror's Submission.
- k. An Offeror is solely responsible for timely delivery of the Submission to the Department prior to the Bid Submission Due Date stated in Section 1.1 of this IFB. Delays in United States mail deliveries or any other carrier, including couriers or agents of New York State, shall not excuse late bid submissions. If the Bid Submission 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 Bids will be accepted for this IFB. In addition, it is the sole responsibility of the Offeror to verify that all elements of the bid submission are complete, correct and without error.

7. Bid Deviations

The Department will not entertain bid deviations to Standard Clauses for New York State Contracts (Appendix A). The Department will also not entertain material and substantive bid deviations to the solicitation to Standard Clauses for All Department Contracts (Appendix B), Information Security Requirements (Appendix C), and Insurance Requirements (Appendix E). NYS law precludes awarding a contract based on material deviation(s) from the specifications, terms, and/or conditions set forth in the solicitation. Therefore, Submissions 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 Submission non-responsive and may result in rejection of the submission.

If Offeror has an issue or concern regarding provisions in the solicitation and is considering a submission 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 submission. Failure to use the question-and-answer period and instead submitting a bid deviation could render the entire Submission non-responsive and rejected in its entirety.

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. For example, a deviation that would substantially shift

liability (risk) or financial responsibility from the Offeror to New York State would be considered material.

Unless specifically required by the solicitation to be submitted as part of an Offeror's submission, 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 Submission are not considered as having been submitted with or intended to be incorporated as part of the official offer contained in the Submission. 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.

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 Bid Submission. If a non-material bid deviation does not meet these requirements, it shall not be considered by the State and shall be rejected.

An Offeror who does not submit the *Non-Material Deviations Template* (Attachment 8), as part of the Bid Submission is presumed to have no bid deviations.

8. Notification of Tentative Contract Award

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

9. Debriefing

Unsuccessful Offerors will be advised of the opportunity to request a Debriefing and the timeframe by which such requests must be made. Debriefings are subject to the *NYS Department of Civil Service Debriefing Guidelines* (Attachment 5) of this IFB. 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 IFB.

10. Submission of a Protest

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

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

- i. **Time Frame**: Any protest must be received no later than 5:00 p.m. ET on the tenth (10th) 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 an Unsuccessful Offeror, pursuant to the *NYS Department of Civil Service Debriefing Guidelines* (Attachment 5), within five (5) Business Days of the debriefing (whichever date 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 2.1(1) of this IFB.
- iv. A protest of either a non-responsive determination or a selection decision must have one of the following statements clearly and prominently displayed on the envelope or package:

**“Submission of Non-Responsive Determination Protest for
Invitation for Bids
Employee Benefit Card”**

OR

**“Submission of Tentative Award Protest for
Invitation for Bids
Employee Benefit Card”**

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

b. **Review of Submitted Protests**

- i. The Department shall conduct the review process of submitted protests. The Department's Commissioner may appoint a designee to review the submission and to make a recommendation to the Commissioner as to the disposition of the matter. The Commissioner's designee may be an employee of the Department but, in any event, shall be someone who has not participated in the preparation of this IFB, the evaluation of Bid Submission, 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. 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.

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

11. Department of Civil Service Reservation of Rights

An Offeror is required to submit the signed and notarized *Offeror Certifications Form* (Attachment 7) with its Administrative Submission. This notarized attachment sets forth the Offeror's attestation and agreement to abide by laws, Procurement Guidelines, and Executive Orders governing New York State Procurement and any additional requirements set forth in this IFB.

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

- a. Make or not make an award under the IFB, either in whole or in part;
- b. Prior to the Bid Opening, amend the IFB. If the Department elects to amend any part of this IFB, such amendments will also be posted to: <https://www.cs.ny.gov/EBC/IFB/>
- c. Prior to the Bid Opening, direct Offerors to submit Bid modifications addressing subsequent IFB amendments;
- d. Withdraw this IFB, at any time, in whole or in part, prior to OSC approval of award of the Contract;
- e. Waive any requirements that are not material;
- f. Disqualify any Offeror whose conduct and/or Bid Submission fails to conform to any of the mandatory requirements of this IFB;

- g. Require clarification at any time during the Procurement process and/or require correction of apparent errors for the purpose of assuring a full and complete understanding of an Offeror's Bid Submission and/or to determine an Offeror's compliance with the requirements of this IFB;
- h. Reject any or all Bid Submissions received in response to this IFB;
- i. Change any of the scheduled dates or times stated in this IFB;
- j. Seek clarifications and revisions of Bid Submissions;
- 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 Bids, analyze submissions and make adjustments or normalize submissions in the Bid(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 Bids;
- n. Use the Bid, information obtained through any site visits, and the Department's own investigation of an Offeror's qualifications, experience, ability or financial standing, and any other material or information submitted by the Offeror in response to the Department's request for clarifying information, if any, in the course of evaluation and selection under this IFB;
- o. Negotiate with the successful Offeror within the scope of this IFB in the best interests of the Department;
- p. Utilize any and all ideas submitted in the Bid(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 Lowest Projected Cost to enter into negotiations for purposes of executing a Contract. Prior to negotiating with the Offeror with the next Lowest Projected Cost, the Department will notify the Offeror originally selected and provide the date when negotiations shall cease should an agreement not be reached. Costs will not be recalculated

for any remaining Offerors should contract negotiations between the Department and the selected Offeror be unsuccessful because of material differences in key provision(s);

- r. Unless otherwise specified in this IFB, every offer is firm and not revocable for a minimum period of one hundred and eighty (180) days from the Bid Submission Due Date as set forth in the IFB; and
- s. Any Offeror whose Bid Submission might become eligible for a tentative award may be asked to extend the time for which its Bid Submission shall remain valid if the original award is withdrawn.

12. Disclaimer

The Department is not liable for any costs incurred by any Offeror prior to approval of the Contract by OSC. Additionally, no costs will be incurred by the Department for any prospective Offeror or Offeror's participation in any Procurement-related activities. Further, the Department shall not be liable for any costs incurred by the Offeror prior to performing the activities set forth in Section 3 of this IFB. The Department has taken care in preparing the data accompanying this IFB (hard copy attachments, website attachments, and sample document attachments). However, the Department does not warrant the accuracy of the data. The numbers or statistics which appear in hardcopy attachments, website attachments, and sample document attachments referenced throughout this IFB are for informational purposes only and should not be used or viewed by prospective Offerors as guarantees or representations of any levels of past or future performance or participation. Accordingly, prospective Offerors should rely upon and use such numbers or statistics in preparing their Bid at their own discretion.

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

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

NOTICE TO OFFEROR AND ITS LEGAL COUNSEL

All materials submitted by an Offeror in response to this IFB shall become the property of the Department and may be returned to the Offeror at the sole discretion of the Department. Bids may be reviewed or evaluated by any person, other than one associated with a competing Offeror, designated by the Department. Offerors may anticipate that Bids will be evaluated by staff and consultants retained by the Department and may also be evaluated by staff of other New York State Agencies. The Department has the right to adopt, modify, or reject any or all ideas presented in any material submitted in response to this IFB.

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 Bid Submission 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 *FOIL Request for Redaction Chart* (Attachment 11). The Offeror must complete the form specifically identifying by page number, line, or other appropriate designation, the specific information requested to be protected from FOIL disclosure and the specific reason why such information should not be disclosed. Page 2 of *FOIL Request for Redaction Chart* (Attachment 11) contains information regarding appropriate justification for protection from FOIL disclosure. Vague, non-specific, or summary assertions that material is proprietary, or trade-secret are inadequate and will not result in protection from FOIL disclosure.

The completed *FOIL Request for Redaction Chart* (Attachment 11) must be submitted to the Department as part of the Administrative Submission and additionally please follow instructions regarding submission of a separate USB storage drive as described below.

If the Offeror chooses not to assert any Bid material and/or supplemental submission should be protected from FOIL disclosure, the Offeror should check the applicable box on *FOIL Request for Redaction Chart* (Attachment 11) and submit Attachment 11 as part of their Administrative Submission. If a completed *FOIL Request for Redaction Chart* (Attachment 11) form is not submitted, the Department will assume that the Offeror chooses not to assert that any bid material or supplemental submission, as applicable, should be protected from FOIL disclosure.

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.

a. Requested Redactions – Second USB Storage Drive:

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

- i. The Offeror must provide an electronic copy of Attachment 11 as well as the Administrative Submission, the Technical Submission, and the Financial Submission on a **separate, second USB storage drive** and reflect the Offeror's requested redactions. The electronic documents

must be prepared in PDF format. Each specific portion of the Bid 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 drive must be complete Bids, including all Attachments. No section may be omitted from the USB storage drive 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.

- ii. During the Bid Submission evaluation process, the Department may request additional information through clarification requests. Any requested redactions for additional written material provided by the Offeror in response to the Department’s requests also must be submitted following the redaction instructions above, however, may be returned as PDF attachments via Email when responding to clarification requests.
- iii. Upon acceptance and signature of the Contract submitted for execution by the Department and approval by controlling agencies, if applicable, the Contractor is requested to provide any requested redactions of the signed contract at the time the Contractor signs and submits the contract to the Department. The requested redactions from the executed contract may be emailed as a PDF with the above redaction methods requested.

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 New York State 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 cancellation of the Contract and criminal proceedings as may be required by law. An Offeror must submit an affirmative statement as to the existence of, absence of, or potential for conflict of interest on the part of the Offeror because of prior, current, or proposed contracts, engagements, or affiliations, by submitting a completed *Offeror Certifications Form* (Attachment 7), in the Offeror’s Administrative Proposal.

3. New York State Required Certifications

An Offeror is required to submit the signed *Offeror Certifications Form* (Attachment 7) with its Bid Submission. This attachment sets forth the Offeror's attestation that the Offeror meets the minimum qualifications and has binding authority to submit a Bid. Additionally, it acknowledges and attests the Offeror's ability to meet the minimum requirements to bid, as well as certifying compliance with the MacBride Fair Employment Principles and Non-Collusive Bidding Certification as well as attestation the Offeror has read and will abide by New York State Finance Law 139 j-k Lobbying Law and its permissible contacts. It also sets forth the certifications regarding compliance with:

- Executive Order No. 177 regarding discrimination and harassment;
- the New York State Public Officers Law;
- the New York State Finance Law section 139-l regarding written sexual harassment policies; and
- Executive Orders 14 and 16, certifying the Offeror is not a Russian entity or doing business with a Russian entity.

4. New York Subcontractors and Suppliers

An Offeror is required to complete New York State Subcontractors and Suppliers section found in Attachment 7, Offeror Certifications Form, and must be submitted with the Offeror's Administrative Submission. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the State and the nation. In recognition of their economic activity and leadership in doing business in NYS, an Offeror for this IFB is strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or other supporting roles.

SECTION 3: PROJECT SERVICES

The Department is seeking a qualified Offeror, to provide comprehensive EBC Project Services. For the purpose of submitting a Bid, an Offeror must provide the following Project Services which will be incorporated into the resulting Contract:

An overview of the EBC Project Services includes:

- Producing and distributing new, duplicate, and replacement EBCs on behalf of the New York State Department of Civil Service (“Department” or “DCS”) to individuals covered under The Empire Plan; and
- Creating and distributing associated Management Reports to the Department to manage the contract; and
- Working with Empire Plan administrators on the implementation of a digital ID card, which would include providing the administrators or the Department digital images of Empire Plan ID cards.

3.1 Implementation Period Requirements

At the commencement of the Implementation Period, the Offeror will be provided with a test data file, containing detailed benefit card data elements (EBC Data File) shown in the *Sample Empire Plan Card File Layout* (Exhibit 9) and the *Empire Plan Crosswalk* (Exhibit 12) that contains *Benefit Programs* (Exhibit 11) and the corresponding In-Network Out-of-Pocket Limits and Non-Network deductibles and coinsurance for all negotiating units. The Offeror must utilize the test EBC Data File and the *Empire Plan Crosswalk* (Exhibit 12) to create physical and digital sample EBCs, Card Carriers and Envelopes within 20 Business Days of the receipt of the file. The samples produced must demonstrate to the satisfaction of the Department that the resulting Contractor is prepared to produce and distribute the EBCs in all possible production scenarios as set forth in *Employee Benefit Cards Production Scenarios* (Exhibit 10). The Contractor must make any changes to the EBCs, Card Carriers and Envelopes as directed by the Department, in the Department’s sole discretion, to meet the specifications as set forth in this IFB and resulting Contract.

3.2 Materials, Processing and Prototype Specifications

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

1. The materials used in the production of EBCs, card carriers and envelopes shall meet the materials specifications set forth in *the Employee Benefit Card Specifications* (Exhibit 1) of this IFB.
2. The Offeror may utilize any combination of offset, digital or flexographic methods for producing a durable EBC that meets the specifications of this IFB.

3. The layout of the EBC, card carrier and envelope shall meet the Prototype and Information Specifications set forth in the *Employee Benefit Card Specifications* (Exhibit 1). A sample of the current EBC, card carrier, and envelope is set forth in the *Sample Empire Plan Employee Benefit Card and Card Carrier* (Exhibit 2) and *Sample Employee Benefit Card Envelope* (Exhibit 3).
4. A prototype of the Offeror's EBC, card carrier and envelope shall be submitted to the Department as part of the Offeror's Technical Submission. The Department shall, in its sole discretion, determine if the Offeror's EBC, card carrier, and envelope meet the specifications set forth in the *Employee Benefit Card Specifications* (Exhibit 1).
5. The Offeror shall be able to customize, modify, and produce new or modified EBC layouts and card carrier contents within sixty (60) days' prior notice at the written direction of the Department.
6. The Offeror's production process shall display the enrollee's name and up to five (5) dependents' names on the EBC and attach up to four (4) EBCs with the same enrollee identification number onto a single card carrier addressed to the enrollee or dependent, as applicable and insert it in a single envelope that meets the specifications set forth in the *Employee Benefit Card Specifications* (Exhibit 1) of this IFB. The Offeror must be capable of producing and distributing EBCs in all possible production scenarios as set forth in *Employee Benefit Cards Production Scenarios* (Exhibit 10).
7. The Offeror shall pre-sort and mail the envelopes containing the EBC(s) and card carriers through the U.S. Postal Service (USPS), first class to all enrollees and dependents who reside in the United States and Canada in a manner that ensures compliance with HIPAA requirements and with USPS technology that results in maximum postal discounts.
8. The Offeror should put appropriate controls in place to ensure:
 - a. No defective EBCs, card carriers or envelopes are mailed;
 - b. All EBCs are mailed to the correct cardholder(s); and
 - c. The Department is only invoiced for defective EBCs, card carriers or envelopes or any associated postage charges, produced or mailed by the Offeror that the Department directly caused to be defective.

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

- i. The EBC, card carrier and/or envelope does not meet the specifications set forth in the *Employee Benefit Card Specifications* (Exhibit 1) of the contract resulting from this IFB; or

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

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

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

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

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

The Department anticipates placing weekly card production orders but may request EBCs on a more frequent basis over the term of the contract at the costs proposed in Attachment 12, Price Quotation Form. The Department anticipates requesting new benefit cards for all enrollees and covered dependents (approximately 800,000 to 900,000) in mid-November of each year and may also require additional large card reissues at other times during the year. For the purposes of this IFB the Department considers large card reissues to be reissuances of Employee Benefit Cards in excess of the normal weekly production cycle.

This could occur due to changes in annual out-of-pocket costs as described in section 3.5 below. During each weekly and large production cycle, the Offeror shall complete all Project Services associated with the production and distribution of EBCs. The Department requires testing during the large card reissues. An updated *Empire Plan Crosswalk* (Exhibit 12) will be provided when there are changes to the annual out-of-pockets costs. An updated EBC Data File will also be provided with the negotiating units that have changes to the annual out-of-pocket limits.

The Department will transmit to the Offeror a weekly computerized EBC Data File via secure transfer containing detailed benefit card data elements shown in the *Sample Empire Plan Card File Layout* (Exhibit 9).

3.4 Management Reports

The Offeror must create and electronically distribute to the Department in a HIPAA-compliant manner, accurate weekly Card Detail, Card Summary Reports, Data Load Counts and Address Change Reports comparable to the *Sample Card Detail Report* (Exhibit 4), *Sample Card Summary Report* (Exhibit 5), *Sample Data Load Count Report* (Exhibit 6), and *Sample Address Change Report* (Exhibit 7). Each report must be provided to the Department within two (2) Business Days from the completion of each production cycle. The Department reserves the right to request reports be sent in paper and/or a searchable electronic format that is acceptable to the Department.

3.5 Re-issuance of EBCs

Should the Department require a complete or partial re-issuance of Empire Plan EBCs during the term of the contract, the Department and the Offeror shall mutually agree on the time-period and assigned deadline needed for the Offeror to produce and distribute the EBCs and Management Reports. Each year the federal Patient Protection and Affordable Care Act sets new amounts limiting total network out-of-pocket costs. This federal law requires the inclusion of annual out-of-pocket costs on employee health insurance benefit cards and impacts all NYSHIP plans. The Department will issue new Empire Plan benefit cards for all enrollees and covered dependents beginning in mid-November of each year. New benefit cards will also be issued when there is a change to annual out-of-pocket costs due to collective bargaining. Routine weekly card production cycles will continue during the production cycle(s) for a complete or partial re-issuance. The Department requires testing during a complete or partial re-issuance of Empire Plan EBCs. An updated *Empire Plan Crosswalk* (Exhibit 12) will be provided when there are changes to the annual out-of-pockets costs. An updated EBC Data File will also be provided with the negotiating units that have changes to the annual out-of-pocket limits.

3.6 Administration

The Offeror shall maintain an organization of sufficient size with staff that possess the necessary skills and experience to administer, manage and oversee all aspects of the

contract resultant from this IFB during implementation, operation, and transition.

The Offeror shall:

1. Establish and/or dedicate a team of qualified and experienced employees to the Department and maintain and adjust staffing patterns at appropriate levels to provide Project Services as required by the Department;
2. Provide timely responses (within one (1) to two (2) Business Days) to questions and requests posed by the Department;
3. Notify the Department in writing of changes in Key Subcontractor(s), or production facility locations specifically identified in its Bid. Key Subcontractor(s) or production locations shall have comparable or better qualifications or facilities to those outlined in the Bid; and
4. The use and disclosure of personal health information by the Offeror will be subject to the Use and Disclosure of Protected Health Information requirements (see Section 8.2).

3.7 Performance Guarantees and Credits

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

1. Implementation and Start-Up Guarantee and Credit Amount

The Offeror guarantees that all implementation and start-up activities as required by Section 3.1 shall be completed by the Project Services Start Date so that the Offeror can assume full operational responsibility for the services required by this IFB for the production and distribution of EBCs, card carriers and envelopes and production of Management Reports by the Project Services Start Date.

If the Offeror fails to complete all implementation and start-up activities by the Project Services Start Date, the Offeror shall credit against the Project's fees one thousand dollars (\$1,000) per Business Day that the Offeror fails to assume full operational responsibility to the satisfaction of the Department.

2. Production Cycle Guarantee and Credit Amount

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

- a. For orders \leq 10,000 cards, within three (3) Business Days from the date that the EBC Data File is made available by the Department.

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

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

3. Report Guarantee and Credit Amount

The Offeror guarantees that accurate Card Detail, Card Summary, Data Load Count and Address Change Reports shall be delivered to the Department weekly, within two (2) Business Days from the completion of each production cycle. The Offeror shall submit the *Sample Quarterly Performance Report* (Exhibit 8) to the Department within fifteen (15) Business Days after the end of December, March, June, and September months each year during the Contract Term.

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

SECTION 4: ADMINISTRATIVE SUBMISSION

This section of the IFB sets forth the requirements for the Offeror's Administrative Submission. The Administrative Submission should contain all requirements listed below. A bid that is incomplete in any material respect may be eliminated from consideration. The information requested should be provided in the prescribed format. Responses that do not follow the prescribed format may be eliminated from consideration. All responses to the IFB will be subject to verification for accuracy. Additional details pertaining to the required forms are found in Section 2 of this IFB.

4.1 Offeror Certifications Form

Submit a PDF copy of the signed and notarized *Offeror Certifications Form* (Attachment 7). Attachment 7 must be signed and executed by an individual with the capacity and legal authority to bind the Offeror in its offer to the Department.

4.2 Formal Offer Letter

Submit the formal offer in the form *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 Department. Except as otherwise permitted under Section 2.1(6), Bid Deviations, the Offeror must accept the terms and conditions as set forth in this IFB, Standard Clauses for New York State Contracts (Appendix A), Standard Clauses for All Department Contracts (Appendix B), Information Security Requirements (Appendix C), and Insurance Requirements (Appendix E), and agree to enter into Contract with the Department containing, at a minimum, the terms and conditions identified in this IFB 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.

4.3 Non-Material Deviations

Submit *Non-Material Deviations Template* (Attachment 8). See Section 2.1.7 for more information requirements for completing Attachment 8.

4.4 FOIL Redaction Chart

Submit *FOIL Request for Redaction Chart* (Attachment 11) in accordance with Section 2.2.1.a of the IFB.

4.5 Key Subcontractors or Affiliates

Complete the *Key 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 *Key Subcontractors or Affiliates* form (Attachment 9), Key Subcontractors or Affiliates include:

- All vendors who will provide \$100,000 or more in Project Services over the term of the Contract that results from this IFB.

For each Key Subcontractor identified, the Offeror must complete and submit the *Key Subcontractors or Affiliates* form (Attachment 9) and indicate whether or not, as of the date of the Offeror's Bid Submission, a subcontract has been executed between the Offeror and the Subcontractor for services to be provided by such subcontractor relating to the IFB. On the *Key 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 Bid Submission, 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 IFB.
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.
5. Indicate if Subcontractor or Affiliate has certified their Vendor Responsibility Questionnaire. <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

4.6 New York State Standard Vendor Responsibility Questionnaire

The Offeror and any Subcontractor or Affiliate receiving more than \$100K over the life of the Contract must complete and certify and submit an executed the New York State Vendor Responsibility Questionnaire. A person legally authorized to represent the Offeror must execute the questionnaire.

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 Bid, the Offeror agrees to complete the Questionnaire fully and accurately. The Offeror acknowledges that the Department'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 Department be deemed a breach thereof, nor shall the Department be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

4.7 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 (5) 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

[Note: Although these forms are not required as part of the bid, the State encourages Offerors to include them with their bid to expedite contract execution if the Offeror is awarded the Contract.]

SECTION 5: TECHNICAL SUBMISSION REQUIREMENTS

The purpose of Section 5 of this IFB is to set forth the Technical Submissions required of the Offeror. The Offeror's Technical Submission must contain responses to all required submissions from the Offeror in the format requested. Each Offeror may submit only one Technical Submission. Each Offeror's Technical Submission will be evaluated based on the responses to the required submissions contained in Section 5 of this IFB. Each technical requirement will be evaluated on a pass/fail basis. Offerors Bid will be deemed non-responsive and will not be evaluated on cost, if it fails to meet any requirement in this section. An Offeror must not include any cost information in the Technical Submission, including attachments.

5.1 Executive Summary

The Offeror must submit an Executive Summary that includes:

1. The name and address of the Offeror's main and branch offices, the location of the Offeror's proposed production site(s) for Project Services described in Section 3, and the name of the senior officer who will be responsible for this account; and
2. A detailed list of at least two current or former clients, each with a card production size of at least one hundred thousand (100,000) produced within the last 12-month period prior to bid submission.
3. A detailed list of client organizations establishing that the Offeror has at least three years prior experience, within the past five years (2020-2024), producing and distributing Employee Benefit Cards, with the number of cards produced for each client, to clearly demonstrate that the Offeror and/or its Key Subcontractor or Affiliate meets the minimum three years prior experience and of one million Employee Benefit Cards produced in a twelve-month period within those past five years (2020-2024).

5.2 Materials, Processing and Prototype Specifications

The Offeror must submit a prototype of the EBC, card carriers and envelopes following the specifications stated in Section 3.2 of this IFB and *Employee Benefit Card Specifications* (Exhibit 1).

SECTION 6: FINANCIAL SUBMISSION

The Department expects an Offeror to propose an aggressive pricing submission consistent with the size and functional requirements for the EBC.

The sole compensation for the Contractor under the Agreement will be payments based on pricing indicated in the Contractor's Financial Submission. During the term of the Agreement, 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 Agreement.

Offerors' bids which pass the Technical Submission evaluation will be evaluated on cost. Evaluation of Financial Submissions will be performed in accordance with the provisions presented in Section 7 of the IFB.

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

6.1 Production Fees

The Offeror's Financial Submission must contain a completed *Price Quotation Form* (Attachment 12) which will include fees for each year of the five-year term of the Contract for EBCs, card carriers and envelopes for The Empire Plan.

1. The Financial Submission must be based upon the assumptions and the instructions as set forth below.
 - a. The EBC fee and Card Carrier and Envelope fee quoted by the Offeror represent the charges to the Department to cover all Project Services required of the Offeror, with the exception of USPS charges which will be reimbursed on a pass-through basis.
 - b. The Offeror is bound by its quoted EBC fee(s) and Card Carrier and Envelope fee(s), as proposed in the Offeror's Financial Submission for the entire term of the contract, unless amended in writing by the Parties.
 - c. The Offeror shall bill the Department for actual postage costs, using the best U.S. Postal discounts available for mailing EBCs and/or card carriers and envelopes that meet the specifications set forth in this IFB.

- d. The Offeror may request postage pre-payment for the annual reissuance of EBCs, due to the federal requirement that mandates health insurance benefit cards to be reissued when the annual out-of-pocket costs change. Any pre-payment of postage costs is subject to a reconciliation of actual postage costs incurred which is to be performed by the Department. The Offeror shall provide records of postage costs incurred so that the Department can complete such reconciliation.

- e. The Offeror shall invoice the Department, monthly in arrears, for all Project Services rendered during the preceding month, together with full supporting detail(s) to the Department's reasonable satisfaction and in a format required by the Department. Such invoices shall include, at a minimum, the quantity, unit price, and total amount due for EBCs, card carriers and envelopes, and total amount due for EBCs. The Offeror must separately invoice the Department for all USPS charges as well, including, but not limited to, USPS postage upgrades for 1st Class International mail, postage upgrades for disqualified mailing addresses, and USPS postage rate increases.

SECTION 7: EVALUATION AND SELECTION CRITERIA

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

7.1 Administrative Submission Evaluation

Bid Submissions determined by the Department to satisfy the submission requirements set forth in Section 4 of this IFB will be evaluated by an evaluation team composed of staff from the Department. An Offeror's Bid Submission shall be removed from the evaluation process and not be considered for award if the Offeror does not submit a *Formal Offer Letter* (Attachment 3) and an *Offeror Certifications Form* (Attachment 7) or should it be determined that the Offeror did not satisfy the requirements specified in Section 4 of this IFB, despite any attestation made regarding the requirements. If the Offeror's Bid Submission meets these requirements, it will be advanced for Technical Submission evaluation.

7.2 Technical Submission Evaluation

The Technical Submission will be evaluated by the Department to ensure the Offeror has the capacity and capability to administer EBC Project Services. Per Section 5 of this IFB, an Offeror's Submission shall be removed from the evaluation process and not be considered for award if the Offeror fails to meet each of the following requirements:

1. Executive Summary

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

- a. The name and address of the Offeror's main and branch offices, the location of the Offeror's proposed production site(s) for Project Services described in Section 3 of this IFB, and the name of the senior officer who will be responsible for this account;
- b. A detailed listing of client organizations with the number of cards produced for each client to clearly demonstrate that the Offeror and/or its Key Subcontractor or Affiliate meets the minimum requirement of at least 1,000,000 cards; and
- c. The name of at least two current or former clients, each with a card production size of at least one hundred thousand (100,000) produced in a 12-month period.

2. Materials, Processing and Prototype Specifications

The Offeror's submitted prototypes of the EBC, card carriers and envelopes will be evaluated to ensure that these meet the specifications as detailed in the *Employee Benefit Card Specifications* (Exhibit 1).

7.3 Financial Submission Evaluation

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

	Empire Plan Estimated Annual Utilization
Employee Benefit Card (EBC)	961,000
Card Carrier and Envelope (Packet)	640,000

1. Empire Plan Projected Cost

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

- i. Offeror's proposed fee per EBC from Attachment 12 for each year of the contract multiplied by 961,000 EBCs per year; and
- ii. Offeror's proposed fee per packet of Card Carrier and Envelope from Attachment 12 for each year of the contract multiplied by 640,000 Packets per year.

7.4 Award Determination

An Award will be made to the responsive and responsible Offeror whose Bid meets all the terms, conditions, and specifications of this IFB and has the lowest Empire Plan Projected Cost. The Department shall enter into negotiations for the purpose of executing a contract with the single Offeror.

In the event of a tie, in accordance with the SFL §163(10)(a), the decision to award a contract to one Offeror over the other(s) shall be based on The Empire Plan Projected Cost for Year 1 of the Contract Term, as quoted in the *Price Quotation Form* (Attachment 12). The Commissioner's decision shall be final and the basis for determining the award shall be documented in the procurement record.

SECTION 8: ADDITIONAL PROVISIONS

Additional terms and conditions not already addressed in the IFB are set forth below and shall be incorporated into the resulting Contract.

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. Use and Disclosure of Protected Health Information

- a. The Offeror acknowledges that the Offeror is a “Business Associate” as that term is defined in the HIPAA implementing regulations at 45 CFR 160.103, of the Department as a consequence of the Offeror’s provision of Project Services on behalf of the Department within the context of the Offeror’s performance under the resulting Contract and that the Offeror’s provision of Project Services will involve the disclosure to the Offeror of individually identifiable health information from the Department or other service providers on behalf of the Department, as well as the Offeror’s disclosure to the Department of individually identifiable health information as a consequence of the Project Services performed under the resulting Contract. As such, the Offeror, as a Business Associate, will be required to comply with the provisions of this Section.
- b. For purposes of this Section, the term “Protected Health Information” (PHI) means any information, including demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual, to the provision of health care to an individual, or to the past, present, or future payment for the provision of health care to an individual, that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual. Within the context of the resulting Contract, PHI may be received by the Offeror from the Department or may be created or received by the Offeror on behalf of the Department in the Offeror’s capacity as a Business Associate. All PHI received or created by the Offeror in the Offeror’s capacity as a Business Associate and as a consequence of its performance under the resulting Contract is referred to herein collectively as “Department’s PHI”.
- c. The Offeror acknowledges that the Department administers on behalf of NYS, several group health plans as that term is defined in HIPAA’s implementing regulations at 45 CFR Parts 160 and 164, and that each of those group health plans consequently is a “covered entity” under HIPAA. These group health plans include NYSHIP, which encompasses The

Empire Plan as well as participating health maintenance organizations; the Dental Plan, and the Vision Plan. In this capacity, the Department is responsible for the administration of these “covered entities” under HIPAA. The Offeror further acknowledges that the Department has designated NYSHIP and The Empire Plan as an Organized Health Care Arrangement (OHCA), respectively. The Offeror further acknowledges that:

- i. The Offeror is a HIPAA “Business Associate” of the group health plans identified herein as “covered entities” as a consequence of the Offeror’s provision of certain services to and/or on behalf of the Department as administrator of the “covered entities” within the context of the Offeror’s performance under the resulting Contract, and that the Offeror’s provision of such services may involve the disclosure to the Offeror of individually identifiable health information from the Department or from other parties on behalf of the Department, and also may involve the Offeror’s disclosure to the Department of individually identifiable health information as a consequence of the services performed under the resulting Contract; and
 - ii. Contactor is a “covered entity” under HIPAA in connection with its provision of certain services under the resulting Contract. To the extent Offeror acts as a HIPAA “Business Associate” of the group health plans identified as “covered entities”, the Offeror shall adhere to the requirements as set forth herein. Offeror is responsible to obtain from Members and Enrollees all consents and/or authorizations, if any, required for Offeror to perform the services hereunder and for the use and disclosure of information, including the Department’s PHI, as permitted under the resulting Contract.
- d. Permitted Uses and Disclosures of the Department’s PHI: The Offeror may create, receive, maintain, access, transmit, use, and/or disclose the Department’s PHI solely in accordance with the terms of the resulting Contract. In addition, the Offeror may use and/or disclose the Department’s PHI to provide data aggregation services relating to the health care operations of the Department. Further, the Offeror may use and disclose the Department’s PHI for the proper management and administration of the Offeror if such use is necessary for the Offeror’s proper management and administration or to carry out the Offeror’s legal responsibilities, or if such disclosure is required by law or the Offeror obtains reasonable assurances from the person to whom the information is disclosed that it shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Offeror of any instances of which it is aware in which the

confidentiality of the information has been breached. Additionally, the Offeror may use and/or disclose the Department's PHI, as appropriate:

- i. For treatment, payment and health care operations as described in 45 CFR Section 164.506(c)(2), (3), or (4); and
 - ii. To de-identify the information or create a limited data set in accordance with 45 CFR §164.514, which de-identified information or limited data set may, consistent with this section, be used and disclosed by Offeror only as agreed to in writing by the Department and permitted by law.
- e. Nondisclosure of the Department's PHI: The Offeror shall not create, receive, maintain, access, transmit, use, or further disclose the Department's PHI otherwise than as permitted or required by the resulting Contract or as otherwise required by law. The Offeror shall limit its uses and disclosures of PHI when practicable to the information comprising a Limited Data Set, and in all other cases to the minimum necessary to accomplish the intended purpose of the PHI's access, use, or disclosure.
- f. Safeguards: The Offeror shall use appropriate, documented safeguards to prevent the use or disclosure of the Department's PHI otherwise than as provided for in the resulting Contract. The Offeror shall maintain a comprehensive written information security program that includes administrative, technical, and physical safeguards that satisfy the standards set forth in the HIPPA Security Rule at 45 CFR §§ 164.308, 164.310, and 164.312, along with corresponding policies and procedures, as required by 45 CFR § 164.316, appropriate to the size and complexity of the Offeror's operations and the nature and scope of its activities, to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains, accesses, or that it transmits on behalf of the Department pursuant to the resulting Contract to the same extent that such electronic PHI would have to be safeguarded if created, received, maintained, accessed, or transmitted by a group health plan identified herein.
- g. Breach Notification: In addition to the Disclosure of Breach requirements specified in *Standard Clauses for All Department Contracts* (Appendix B), the following provisions shall apply:
 - i. Reporting: The Offeror shall report to the Department any breach of unsecured PHI, including any use or disclosure of the Department's PHI otherwise than as provided for by the resulting Contract, of which the Offeror becomes aware. An acquisition, access, transmission, use, or disclosure of the

Department's PHI that is unsecured in a manner not permitted by HIPAA or the resulting Contract is presumed to be a breach unless the Offeror demonstrates that there is a low probability that Department's PHI has been compromised based on the Offeror's risk assessment of at least the following factors:

- 1) The nature and extent of Department's PHI involved, including the types of identifiers and the likelihood of re-identification;
 - 2) The unauthorized person who used Department's PHI or to whom the disclosure was made;
 - 3) Whether Department's PHI was actually acquired or viewed; and
 - 4) The extent to which the risk to Department's PHI has been mitigated.
- ii. Required Information: In addition to the information required in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, the Offeror shall provide the following information to the Department within the time period identified in *Standard Clauses for All Department Contracts* (Appendix B), Disclosure of Breach, except when, despite all reasonable efforts by the Offeror to obtain the information required, circumstances beyond the control of the Offeror necessitate additional time. Under such circumstances, the Offeror shall provide to the Department the following information as soon as possible and without unreasonable delay, but in no event later than thirty Calendar Days from the date of discovery:
- 1) The date of the breach incident;
 - 2) The date of the discovery of the breach;
 - 3) A brief description of what happened;
 - 4) A description of the types of unsecured PHI that were involved;
 - 5) Identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach;
 - 6) A brief description of what the Offeror is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and

- 7) Any other details necessary to complete an assessment of the risk of harm to the individual.
- iii. The Offeror will be responsible to provide notification to individuals whose unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed as a result of a breach, as well as the Secretary of the United States Department of Health and Human Services and the media, as required by 45 CFR Part 164.
 - iv. The Offeror shall maintain procedures to sufficiently investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of these procedures and the specific findings of the investigation to the Department upon request.
 - v. The Offeror shall mitigate, to the extent practicable, any harmful effects from any use or disclosure of PHI by the Offeror not permitted by the resulting Contract.
- h. Associate's Agents: The Offeror shall require all of its agents or Subcontractors to whom it provides the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, to agree, by way of written contract or other written arrangement, to the same restrictions and conditions on the access, use, and disclosure of PHI that apply to the Offeror with respect to the Department's PHI under the resulting Contract.
 - i. Availability of Information to the Department: The Offeror shall make available to the Department such information and documentation as the Department may require regarding any disclosures of PHI by the Offeror to fulfill the Department's obligations to provide access to, provide a copy of, and to account for disclosures of the Department's PHI in accordance with HIPAA and its implementing regulations. The Offeror shall provide such information and documentation within a reasonable amount of time of its receipt of the request from the Department. The Offeror must provide the Department with access to the Department's PHI in the form and format requested, if it is readily producible in such form and format; or if not, in a readable hard copy form or such other form and format as agreed to by the Parties, provided, however, that if the Department's PHI that is the subject of the request for access is maintained in one or more designated record sets electronically and if requested by the Department, the Offeror must provide the Department with access to the requested PHI in a readable electronic form and format.

- j. Amendment of the Department's PHI: The Offeror shall make the Department's PHI available to the Department as the Department may require to fulfill the Department's obligations to amend individuals' PHI pursuant to HIPAA and its implementing regulations. The Offeror shall, as directed by the Department, incorporate any amendments to the Department PHI into copies of such Department PHI maintained by the Offeror.
- k. Internal Practices: The Offeror shall make its internal practices, policies and procedures, books, records, and agreements relating to the use and disclosure of the Department's PHI, whether received from the Department or created or received by the Offeror on behalf of the Department, available to Department and/or the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by the Department and/or the Secretary of the U.S. Department of Health and Human Services for purposes of determining the Department's compliance with HIPAA and its implementing regulations.
- l. Termination: This Contract may be terminated by the Department at the Department's discretion if the Department determines that the Offeror, as a Business Associate, has violated a material term of this Section. Data return and destruction upon contract termination is governed by *Information Security Requirements* (Appendix C).
- m. Indemnification: Notwithstanding the provisions in *Standard Clauses for All Department Contracts* (Appendix B), the Offeror agrees to indemnify, defend and hold harmless the State and the Department and its respective employees, officers, agents, or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this section, Use and Disclosure of Protected Health Information, or from any acts or omissions related to this section by the Offeror or its employees, officers, subcontractors, agents, or other members of its workforce, without limitations. Accordingly, the Offeror shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs, or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding, or demand by any third party which results from the Offeror's acts or omissions hereunder. The Offeror's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Contract.
- n. Miscellaneous:
 - i. Survival: The respective rights and obligations of Business

Associate and the “covered entities” identified herein under HIPAA and as set forth in this Section, USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION, shall survive termination of the resulting Contract.

- ii. Regulatory References: Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended, or modified, as of their respective compliance dates.
- iii. Interpretation: Any ambiguity in the resulting Contract shall be resolved to permit covered entities to comply with HIPAA.

3. 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.