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| **BUREAU OF FISCAL SERVICES**  **Procurement Unit** |  |  |

**December 7, 2023**

**Request for Proposals (RFP) 23-102**

**Financial Institution Data Match Services**

**Response to Bidder Questions and Amendment #1**

To All Potential Bidders:

Attached are the Department’s Responses to Bidder Questions received for the above referenced RFP.

Additionally, the Department is issuing Amendment #1 as clarification to:

* Amend RFP 23-102, Section 7.1. Proposal Content and Organization, Pgs. 40-41

Corrected pages are attached to this document. All additions and are made in green text and deletions are made in red text.

All other requirements and conditions remain as indicated in the RFP.

| **#** | **RFP Reference** | | **Question** | **Answer** |
| --- | --- | --- | --- | --- |
| **Section** | **Page** |
| 1 | **RFP Section 1.4.**  Scope of Services | 11-12 | The RFP states “The Department will expect the Contractor to provide attorneys, if determined necessary by the Department, to respond to legal issues brought to this program by attorneys of the FIs.”  Will the State be willing to strike this provision as the Contractor is designated by the Commissioner as a vehicle to facilitate the FIDM process and therefore Contractor lacks the legal authority the State has to enforce participation in the FIDM program?  Additionally, will the State’s attorneys be involved in this process? What criteria will the State use in determining necessity? | **No. The State will not strike this provision.**  **Yes, the State's attorneys will be involved. The Contractor's attorneys may reasonably be asked to advise on eligibility and legal requirements concerning participation in the program, as well as protection and security of taxpayer and client data. The State will use its attorneys to assist in resolving issues through oral communication and writing.** |
| 2 | **RFP Section 3.1.**  Bidder Experience and Reference Requirements | 14 | Please confirm that Attachment B should be submitted in Volume One, Tab 2 of our response as indicated in the Bidder’s Checklist and not in Tab 3 Technical Requirements as listed in the RFP on page 14. | **Attachment B – Experience and Reference Response Form, should be submitted in Volume One, Tab 2.** |
| 3 | **RFP Section 3.3.**  Outreach Plan | 15 | Will NYS DTF require new agreements to be executed for all existing FIs participating in the program, or will agreements only need to be obtained for those not participating in the current program? | **As of this writing, we do not anticipate needing to replace existing agreements which are in place between the Department and current FIDM participants. However, we reserve the right to require that new agreements be obtained from currently participating FIs should there become a need to do so.**  **New agreements will continue to be required for each new participant onboarded for the duration of the contract.** |
| 4 | **RFP Section 5.2.**  Quarterly Match Fee | 21 | Given that there is still a cost to the vendor to match a file with an FI that has zero records, such as maintaining file transfer methods, technical support to the FI, file processing time, compliance efforts, etc., would the state be willing to remove the requirement of non-payment for these FIs? | **No, the State will not remove the requirement of non-payment for these FIs. All costs associated with the requirements of the RFP must be incorporated into the Bidder’s financial response. Bidders must provide all pricing information requested on Attachment 19, Financial Response Form, and should not modify or change the Attachment.** |
| 5 | **RFP Section 6.2.6.**  Equal Employment Opportunity Requirements | 29 | The RFP states “This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.”  Does this section including the requested attachments within apply if Bidder will not have any employees working in NY State? | **The Department confirms that Section 6.2.6 does not apply to Contractors with employees working exclusively outside of New York State.** |
| 6 | **RFP Section 6.2.9.**  Workers’ Compensation and Disability Benefits Certifications | 31 -32 | Bidder provides Worker’s Compensation in the States where it has employees. Do the Worker’s Compensation and Disability Benefit requirements apply if Bidder will not have any employees working in NY State? | **Bidder must provide sufficient evidence of coverage, or exemption from coverage (Form CE-200, Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage), as outlined in RFP Section 6.2.9.** |
| 7 | **RFP Section 6.2.24.**  Sexual Harassment Prevention Certification | 39 -40 | Bidder has a written sexual harassment prevention policy, and provides biennial sexual harassment training. Since Bidder will not have any employees in NY State, will the State allow an exception to this requirement? | **Bidders are required to submit Attachment 15 - Sexual Harassment Prevention Certification with their proposal submission. State Finance Law §139-l requires Bidders on state procurements to certify that they have a written policy addressing sexual harassment prevention in the workplace and provide annual sexual harassment training (that meets the Department of Labor’s model policy and training standards) to all its employees.**  **Bids that do not contain the certification will not be considered for award; provided however, that if the Bidder cannot make the certification, the Bidder may provide a signed statement with their bid detailing the reasons why the certification cannot be made. The Department will assess the reasonableness of the Bidder’s signed statement and determine if the information provided is acceptable.** |
| 8 | **RFP Section 7.1.**  Proposal Content and Organization | 40-41 | The Volume One Format listed in the RFP contains 2 Tab’s, while the Bidder’s Checklist contains 3 Tab’s. Should the vendor use the Bidder’s Checklist format with the 3 Tab’s for submission of its proposal? | **Yes, the Bidder should use the Bidder’s Checklist format including 3 Tabs for submission of its proposal. Also see RFP Amendment #1.** |
| 9 | **RFP Section 7.1.**  Proposal Content and Organization | 40-41 | The Volume Two Format shows we should include the Bidder’s Checklist in Tab 1, while the Bidder’s Checklist shows the Bidder’s checklist should be submitted in Tab 2. Should the vendor use the Bidder’s Checklist format providing the checklist in Tab 2 for submission of its proposal? | **Yes, the Bidder should use the Bidder’s Checklist format for submission of its proposal. Also see RFP Amendment #1.** |
| 10 | **Attachments**  Attachment 15 – Sexual Harassment Prevention Certificate | 20 | Bidder has a written sexual harassment prevention policy, and provides biennial sexual harassment training. Since Bidder will not have any employees in NY State, will the State allow an exception to this requirement? | **See Response to Question #7.** |
| 11 | **Attachments**  Attachment 18 – Acknowledgement of Confidentiality of IRS Tax Return Information and Internal Revenue Code Selected Confidentiality Provisions Pertaining to Contractors (Technology Services) | 24 | It is our understanding that FTI will not be sent to the contractor for this program, due to that data being disseminated to the FIs. Will the contractor receive FTI under this contract? If so, how does the Fingerprint process work, required by Pub 1075, for out of state contractors? Will the contractor be responsible for the cost to fingerprint, or will NYS DTF carry that cost? | **Yes, there will be FTI included in the data being disseminated to the FIs, although it will not be specifically identified as such.**  **Since FTI will be provided, the contractor must implement a background investigation process for its employees that will have access to the information. Additional information on these requirements can be found within Publication 1075, section 2.C.3 - Background Investigation Minimum Requirements at** [**https://www.irs.gov/pub/irs-pdf/p1075.pdf**](https://www.irs.gov/pub/irs-pdf/p1075.pdf)**. More specifics on fingerprinting and the components of the IRS background investigation requirements can also be found here on** [**https://www.irs.gov/privacy-disclosure/background-investigations**](https://www.irs.gov/privacy-disclosure/background-investigations)**.**  **All costs associated with the requirements of the RFP must be incorporated into the Bidder’s financial response.** |
| 12 | **Attachments**  Attachment E – Outreach Plan Response Form | 37 | Point 3 provides *“Bidder agrees that it will, on an annual basis, confirm that the contact person’s for each FI is still accurate.”*  Will the State provide bidder with a form annual to fulfill this requirement? | **The Department can and will work collaboratively with the new FIDM vendor to develop a form that meets the needs of both the Department and the vendor.** |
| 13 | **Exhibits**  Exhibit A – Preliminary Base Contract  Article III.  Contractor Responsibilities | 5-6 | Exhibit A to the RFP States “The Contractor will provide attorneys, if determined necessary by the Department, to respond to legal issues brought to the FIDM program by attorneys of the Financial Institutions (FIs)”  Will the State be willing to strike this provision as the Contractor is designated by the Commissioner as a vehicle to facilitate the FIDM process and therefore Contractor lacks the legal authority the State has to enforce participation in the FIDM program?  Additionally, will the State’s attorneys be involved in this process? What criteria will the State use in determining necessity? | **See Response to Question # 1.** |
| 14 | **Exhibits**  Exhibit A – Preliminary Base Contract  Article IX.  Ownership and Return of the State’s Data | 12 | Bidder respectfully requests that the State amend the first paragraph of this section to clarify bidder’s ownership of proprietary material. This clarification is necessary to provide bidder a reasonable protection of its proprietary material used in connection with this project. Please see below the suggested language to address this concern:  *“The State retains sole ownership and intellectual property rights in and to all information, data, databases, data compilations, reports, charts, graphs, diagrams, or other information provided or made accessible by the State to the Contractor, or created by the Contractor pursuant to the Agreement, except for Contractor’s prior proprietary, trademarked or patented materials, even if utilized for this project. The State shall not have any residual rights to said materials beyond this Agreement.”* | **The Department declines to amend the Preliminary Base Contract at this time. Per Section 6.2.18 of the RFP, Bidders are allowed to provide non-material proposed changes to the Preliminary Base Contract with their proposal submission.** |
| 15 | **Exhibits**  Exhibit A – Preliminary Base Contract  Article X.  Reserved Rights | 13 | Bidder respectfully requests that the State amend point 4 to more clearly define the scope of access to personnel and records:  *“To terminate the Agreement should the Contractor not cooperate with a State investigation. This includes, but is not limited to, not providing ~~immediate and unfettered~~ access to personnel and records relating to this Agreement, as set forth in this Agreement.”* | **The Department declines to amend the Preliminary Base Contract at this time. Per Section 6.2.18 of the RFP, Bidders are allowed to provide non-material proposed changes to the Preliminary Base Contract with their proposal submission.** |
| 16 | **Exhibits**  Exhibit A – Preliminary Base Contract  Article XV.  Termination | 20-22 | Subsection A.2.j provides that a material breach for which there is no cure period includes where “Contractor fails to submit and/or use such MWBE Utilization Plan, if applicable.  Since there is no MWBE requirement in this RFP, is a MWBE Utilization Plan required? | **The Department confirms that a MWBE Utilization Plan is not required to be submitted.** |
| 17 | **Exhibits**  Exhibit A – Preliminary Base Contract  Article XVI.  Indemnification and Limitation of Liability | 23 | Bidder respectfully requests that the State amend the last sentence of the first paragraph of Section A. to clarify that bidder shall not be required to indemnify the State if the liability was caused by actions outside the bidder’s control. This exception is necessary to allow bidder a controlled and reasonable risk management approach to the Agreement and the services provided by bidder:  *“Contractor shall not be obligated to defend or indemnify ~~to the extent~~ for that portion of any claim, loss or damage arising hereunder is solely due to the negligence or willful misconduct of the DTF.”* | **The Department declines to amend the Preliminary Base Contract at this time. Per Section 6.2.18 of the RFP, Bidders are allowed to provide non-material proposed changes to the Preliminary Base Contract with their proposal submission.** |
| 18 | **Exhibits**  Exhibit A – Preliminary Base Contract  Article XXI. General Terms and Conditions | 33-38 | Bidder respectfully requests that the State amend Subsection F to more clearly define the scope of access to personnel and records:  “*The Contractor shall provide ~~immediate and unfettered~~ access to the State to all records deemed necessary by the State for the conduct of an investigation.*” | **The Department declines to amend the Preliminary Base Contract at this time. Per Section 6.2.18 of the RFP, Bidders are allowed to provide non-material proposed changes to the Preliminary Base Contract with their proposal submission.** |
| 19 | **Appendices**  Appendix A – Standard Clause for NYS Contracts  Section 12.  Equal Employment Opportunities for Minorities and Women | 7 | According to this Section, Section 312 does not apply to “(i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.” Please clarify if an affirmative action plan is required for a vendor who will have no employees working in the State of NY. | **The Department confirms that Section 312 of the NYS Executive Law does not apply to Contractors with employees working exclusively outside of New York State.** |
| 20 | **Appendices**  Appendix A – Standard Clause for NYS Contracts  Section 23.  Compliance With Consultant Disclosure Law | 8-9 | This section provides that “…*in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.”*  Will the State provide an employment report template for bidder to fulfill this requirement? | **The Department has provided a template of this annual report as Exhibit D, Contractor’s Annual Employment Report – Form B.**  **The Department will contact the winning Bidder to submit Exhibit C, State Consultant Services – Contractor’s Planned Employment – Form A.**  **See RFP Section 6.2.20, Requirements Imposed Pursuant to Laws of 2006, Chapter 10, for additional details on these two forms.** |

workplace and provide annual sexual harassment training to all their employees and that such policy, at a minimum, meets the requirements of Section two hundred one-g of the labor law.

**The Bidder** **must complete and submit Attachment 15 – Sexual Harassment Prevention Certification.**

1. * 1. **Executive Order No. 16 Certification**

In accordance with Executive Order No. 16, the Bidder must certify that it does not conduct any commercial activity in Russia or transact business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

**The Bidder must complete and submit Attachment 16 – EO 16 Certification.**

1. **Proposal Content and Submission Requirements**

The Bidder must provide a response that clearly and precisely provides all required information. Emphasis should be placed on conformance with the RFP instructions, responsiveness to the RFP requirements and clarity of the intent.

Proposals that do not comply with these instructions or do not meet the full intent of all of the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive. To assist Bidders, we have provided a Bidder’s Checklist located as **Attachment 1** of this RFP. A Proposal that does not provide all of the information requested may be subject to rejection.

The State does not require, nor desire, any excessive promotional material which does not specifically address the response requirements of this RFP.

**Faxes or electronically transmitted Proposals will not be accepted.**

1. 1. **Proposal Content and Organization**

To facilitate the evaluation process, the Bidder must organize the Proposal into three (3) distinct volumes as follows:

Volume One: Technical Proposal

Volume Two: Administrative Proposal

Volume Three: Financial Proposal

1. Volume One Format

Volume One should contain a table of contents with page numbers and each Section should be tabbed as follows:

1. Tab 1 – Executive Summary
2. Tab 2 – Qualifying Requirements
3. Tab 3 – Technical Requirements
4. Volume Two Format
   1. Tab 1 – ~~Bidder’s Checklist and~~ Cover Letter, Bidder-Proposed Changes, and Request for Exemption from Disclosure
5. Tab 2 – Bidder’s Checklist (Attachment 1) and Administrative Requirements Response Forms (Attachments 3-18; Exhibit F)
6. Volume Three Format

This volume must contain **Attachment 19 – Financial Response Form.**

* 1. **Proposal Submission**

The Bidder must submit two (2) originals and one (1) hard paper copies of:

Volume One: Technical Proposal

Volume Two: Administrative Proposal

Volume Three: Financial Proposal

All volumes should be bound separately, be clearly identified and should contain page numbers.

The Bidder should also submit one (1) electronic copy (CD/DVD/Flash Drive) of Volumes One, Two, and Three.

The electronic copy should be encrypted and password protected. The password should be submitted via email to [bfs.contracts@tax.ny.gov](file:///\\dtf-smb\dtf_shared\Share\Obma\BBUDACTG-BPROCURE\CMU\RFP's\PENDING%20RFP's\dtf_home\P39442\bfs.contracts@tax.ny.gov).

Proposals must be received by the date and time specified in the Schedule of Events.

Bidder Proposals should be enclosed in sealed containers with the following visibly inscribed on the outside of all containers:

Attn: Director, Procurement Services

New York State Department of Taxation and Finance

Procurement Services Unit

Office of Budget and Management Analysis

W. A. Harriman State Office Building Campus

Albany, NY 12227

All Proposals should have a label on the outside of the package or shipping container outlining the following information:

“BID ENCLOSED”

RFP 23-102

Financial Institution

Data Match Services

<*Bid Submission Date and time*>