

New York State Department of Health
Drug and Diabetic Supply Rebate Administration and Management Services
RFP#-20085
Questions and Answers Posted 11/24/2021

Question #	RFP Section	Bidder's Question	Answer
1.	Section 4.0 Scope of Work	Will SUNY Buffalo continue to perform their current duties/responsibilities for the contract period of the RFP?	This question is not relevant to the scope of the RFP.
2.	Section 4.2.2w	For this requirement, will NY DOH want outcomes or value based supplemental rebate contracts that include laboratory and medical data as a measurement, or only those outcomes or value based supplemental rebate contracts that include pharmacy data points as a measurement?	When applicable to a particular value or outcomes-based contract, the State is willing to include laboratory and medical data as a measurement.
3.	Section 4.2.9	As all disputes transfer to the responsibility of the Contractor after go-live, does performance guarantee A.2.3.k apply to the historical disputes?	See section A.2.3.k - The standard is calculated and reported on a monthly basis and only applies to disputes that result from invoices generated by the contractor on or after the Contract Start date.
4.	Section 4.2.12, Data Storage, Transfer, and Sharing	Will any hard copy documents be turned over to the Contractor? If so, how many boxes of hard copy documents will be turned over and where are the hard copy documents currently located?	The State estimates that approximately 350 boxes of hardcopy documents will be turned over. Hardcopy documents are located at the current contractor's office in Albany, NY and at a storage facility. The State will cover shipping costs.
5.	Section 4.2.12, Data Storage, Transfer, and Sharing	Will electronic rebate records be turned over to the Contractor? If so, please detail the types of records that will be turned over (e.g., invoices, payments, dispute resolutions, etc.) and for which quarters (e.g., 1Q1991 through present).	Yes- electronic records will be turned over to the new contractor. Common types of documentation include but are not limited to ROSIs, PQAs, payment documentation, dispute resolution proposals, CMS letters and releases, and letters sent by manufacturers regarding new J-Codes, conversion factors, etc.

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			<p>The State maintains historical records back to the 2nd Quarter of 1999 but is open to discuss which quarters will be turned over to the contractor.</p> <p>It is expected that the new contractor is able to accept historical accounts receivable information and data to support Supplemental Rebate (SR) accounts for prior periods, in order to provide the State with current and historical financial reporting.</p>
6.	Section 4.4	Second paragraph indicated the SLOC amount of 5% of contract value is for the initial five years of the contract. However, the contract term in section 2.3 is states six years. Is five years correct in section 4.4?	Please see Amendment One of the RFP.
7.	Section 6.1.E M/WBE Forms and Attachment A – Proposal Document Checklist	Section 6.1.E instructs the bidder to submit completed Form #1 and/or Form #2, Form #4 and Form #5 as directed in Attachment 5, "Guide to New York State DOH M/WBE RFP Required Forms." However, Attachment A Proposal Document Checklist does not list Form #4 and Form #5. Please clarify whether Form #4 and Form #5 should be included with the bidder's Administrative Proposal submission.	Yes, Forms 4 and 5 should be included in the bidder's Administrative Proposal submission. Please see Amendment One of the RFP.
8.	Section 6.1 Administrative Proposal and Attachment A – Proposal Document Checklist	Section 6.1 Administrative Proposal does not include Attachment 9, References; however, the Proposal Document Checklist does include Attachment 9. Please confirm that bidders should include Attachment 9 in their Administrative Proposal.	Confirmed. Please see Amendment One of the RFP.
9.	Section 6.3 Cost Proposal	In RFP Section 6.3, it states that the Cost Proposal (Attachment B) should be signed. There is not a signature area in the Cost Proposal. Can the State provide clarification on where the signature should appear in the Cost Proposal?	Please see Amendment One of the RFP.
10.	Section 6.3 Cost Proposal	Years 4 and 5 are indicated for increase of the lesser of 3% or percent increase in the CPI-U. Is there an increase for year 6?	There will not be an increase in the sixth year. Year six will be the same rate as year five.

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11.	Attachment 7, Bidders' Certified Statements	As a company based outside of New York, we comply with our respective State's governing law, which requires a sexual harassment prevention policy and associated workplace training every two years. If awarded this contract, we are prepared to update our policy to reflect New York State Law requirements and conduct annual sexual harassment prevention training to all employees. Please confirm this is acceptable to the State.	Confirmed.
12.	Attachment 9: IV. Contract Insurance Requirements, Section B.3.d	Attachment 9: IV. Contract Insurance Requirements, Section B.3.d, page number 7: Please explain what information the document referred to as the Supplemental Certificate (referenced in Attachment 8 Section IV) contains.	Supplemental Insurance Certificates are forms that supplement ACORD 25 Certificate of Liability Insurance.
13.	Attachment C, Estimate of Expected Rebate Savings (TP Form-1)	How can a bidder other than the incumbent attest to and provide evidence for review of a confidential supplemental rebate contract at the time of bid if New York Medicaid is not party to that contract?	<p>The intent of the TP Form-1 is for the State to be able to evaluate bidders' expected savings for supplemental and diabetic supply rebates, as demonstrated through already established signed contracts with manufacturers. The State is not requiring that it be a direct party to the agreements with manufacturers.</p> <p>TP Form-1 has been revised and a supplemental rebate number should be reported/provided in aggregate byway of the revised TP Form-1.</p> <p>Please see Amendment One.</p>
14.	Attachment C, Estimate of Expected Rebate Savings (TP Form-1)	<p>Only the incumbent can provide estimates (column X) based on existing contracts for the state of NY. All other bidders cannot provide estimates because 1) they cannot disclose confidential rebate contracts that NY is not a party to; 2) Cannot utilize contracts from another pool (e.g., the SSDC) without permission to join that pool, and 3) NY state specific contracts do not currently exist, with any other bidder but the incumbent.</p> <p>Please consider omitting this requirement/document since, in addition to the issues outlined above, the estimates are irrelevant given NY's anticipated implementation of a single PDL and the commensurate growth in supplemental eligible claims/ rebates.</p>	See answer to Question #13

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15.	Attachment C, Estimate of Expected Rebate Savings (TP Form-1)	<p>In our review of the NY Request for Proposal (RFP)# 20085 Drug and Diabetic Supply Rebate Administration and Management Services, we are concerned about the requirements found in form TP-Form-1 as only the incumbent will be able to populate this form and as a consequence, believe the state has inadvertently limited competitive bids to the incumbent in error. Specifically,</p> <p>TP-Form-1 requires a contract to be in place at the date of the bid in order to include a supplemental rebate estimate in column C. The bidder needs to attest that evidence of a contract is available for review if required by the State of New York.</p> <p>Given the confidentiality of supplemental rebate contracts, only the incumbent would be able to provide evidence of a contract because New York is not a party to any other supplemental rebate contracts. For any bidder not bidding a pool solution, existing contracts for NY would not be available (or even possible).</p> <p>Only Magellan Medicaid Administration has current contracts via the NMPI pool that could be utilized to populate column C and be able to provide to NY for review.</p> <p>The only other pool (the Sovereign State Drug Consortium or SSDC) is not owned by any vendor and cannot be utilized to populate column C as states must be admitted to the SSDC by vote of the other participating states.</p> <p>Due to NY's anticipated growth in membership based on the planned migration to a single-PDL, the relevancy of the estimates is ambiguous.</p> <p>We believe this requirement may create a conflict and unfairly limits competition, likely to only one vendor (the incumbent).</p>	See Answer to Question #13.
16.	Attachment G	<p>Understanding that some components are outside of the bidder's control and could drive noncompliance to the stated standards, please advise the frequency that damages are assessed in the in-force contract with the incumbent vendor. This information will allow competing bidders to more accurately assess any potential risk associated with the performance guarantee requirements.</p>	<p>The performance standards are calculated and reported on a monthly basis. The current contractor is able to abide by the standards with a very low frequency of damages.</p>
17.	Appendix F / Section N, Appendix F Technology Terms and Conditions (in Attachment 8)	<p><i>"Upon expiration or termination of this Contract, the DEPARTMENT shall have full access to all Data for a period of 90 calendar days at no charge."</i></p> <p>Please define "all" data.</p>	<p>Data is defined as all facts, statistics, and items of information, received, accepted, collected, delivered processed or stored by the Contactor during the term of the agreement.</p>

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18.	Appendix F, Section Y/1/a Technology Terms and Conditions (in Attachment 8)	<p>Proposed alternative language:</p> <p>Provide the DEPARTMENT with the source code for the Product at the expense of the CONTRACTOR, place the source code in a third-party escrow arrangement with a designated escrow agent, who shall be named and identified to, and acceptable to, the DEPARTMENT, and who shall be directed to release the deposited source code in accordance with a standard Escrow Agreement acceptable and approved by the DEPARTMENT. The Escrow Agreement must, at minimum, provide for release of the source code to the DEPARTMENT if (i) CONTRACTOR files for bankruptcy or becomes insolvent (ii) CONTRACTOR misrepresents its Products or services (iii) CONTRACTOR fails to perform work as agreed upon in this Contract and subsequent Contract (iv) CONTRACTOR ceases business operations generally or fails to make available maintenance or support services for the then-current version of the licensed Product;</p> <p>The bidder's proprietary materials are confidential. The Department will retain any custom source code that may be applicable, provided it excludes the bidder's intellectual property, if it is developed solely for the Department using federal or New York State funding.</p>	<p>Attachment 7, Bidder's Certifications/Acknowledgments, requires bidders to certify that they accept the contract terms as set forth in Attachment 8. The Department reserves the right to negotiate terms of the contract that are non-material in nature with the contract awardee, within the scope of the RFP and in the best interests of New York State. Nonetheless, bidders must be fully prepared to accept all of the terms and conditions set forth in the RFP, including Attachment 8, without modification should the Department determine that that constitutes the best interests of New York State. As stated in Section 2.2 of the RFP, Attachment 7 also includes a statement that, should any alternative proposals or extraneous terms be submitted with the [bidder's] proposal, such alternative proposals or extraneous terms will not be evaluated by the Department.</p>
19.	Attachment 7, Bidders' Certified Statements	<p>Proposed alternative language:</p> <p>By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides, or will provide upon award if bidder's current written policy includes an alternative timeline, annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meets, or will meet, the requirements of section two hundred one-g of the labor law.</p> <p>As a company based outside of New York, we comply with our respective State's governing law, which requires a sexual harassment prevention policy and associated workplace training every two years. If awarded this contract, we are prepared to update our policy to reflect New York State Law requirements and</p>	<p>Approved. Please see Amendment One.</p>

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		conduct annual sexual harassment prevention training to all employees. We are requesting an amendment to the language within Attachment 7, Bidders' Certified Statements, in consideration of this circumstance.	
20.	Attachment 8, Section I.M- New York State Department of Health Contract.	<p>Proposed alternative language:</p> <p>If the DEPARTMENT is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the DEPARTMENT shall have the authority to require the CONTRACTOR to use such additional personnel, to take such steps necessary to perform the services satisfactorily at a cost agreed to by the parties. at no additional cost to the DEPARTMENT.</p>	No, the Department cannot accept this proposed alternate language.
21.	Attachment 8, Section III.C- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>This Contract may be terminated by the DEPARTMENT for cause in the case of a material, substantial and continuing, breach of this Contract by upon the failure of the CONTRACTOR to comply with the terms and conditions of this Contract, including the attachments hereto, provided that the DEPARTMENT shall give the CONTRACTOR written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving CONTRACTOR'S receipt therefore, such written notice to specify the CONTRACTOR'S failure and the termination of this Contract. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the DEPARTMENT. The CONTRACTOR agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination</p>	No, the Department cannot accept this proposed alternate language.
22.	Attachment 8, Section III.E- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>The DEPARTMENT, except for payment obligations, reserves the right to stop the work being performed under this Contract in the case of a material, substantial and continuing breach at any time that the DEPARTMENT deems the by the CONTRACTOR to be unwilling or unable to perform the work to the satisfaction of the DEPARTMENT. In the event of such cessation of work, and where the CONTRACTOR has been afforded an opportunity to cure its material breach inability to adequately perform within a reasonable time as specified by the DEPARTMENT, but not to exceed 30 days,</p>	No, the Department cannot accept this proposed alternate language.

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		<p>and the CONTRACTOR has failed to cure its breach remedy such defect of performance to the satisfaction of the DEPARTMENT, the DEPARTMENT shall have the right to terminate this Contract and to arrange for the completion of the work in such manner as the DEPARTMENT may deem advisable; and if the cost of having the work completed by a replacement CONTRACTOR exceeds the amount of the initially awarded Contract, the CONTRACTOR and its surety shall be liable to the DEPARTMENT for any excess cost on account thereof.</p>	
23.	Attachment 8, Section III.F- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>This Contract may be canceled at any time by the DEPARTMENT giving to the CONTRACTOR not less than 30 180 days written notice that on or after a date therein specified this Contract shall be deemed terminated and canceled.</p>	No, the Department cannot accept this proposed alternate language.
24.	Attachment 8, Section III.G- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>In the event that the CONTRACTOR, materially breaches through any cause, fails to perform any of the terms, covenants or promises of this Contract, the DEPARTMENT thereupon shall have the right to terminate this Contract by giving notice in writing of the fact and date of such termination to the CONTRACTOR.</p>	No, the Department cannot accept this proposed alternate language.
25.	Attachment 8, Section III.H.2- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>Except as otherwise provided in this Contract, the liability of the DEPARTMENT for payments incurring new charges to the CONTRACTOR and the liability of the CONTRACTOR for services hereunder shall cease.</p>	No, the Department cannot accept this proposed alternate language.
26.	Attachment 8, Section VIII.D- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>All subcontracts shall be in writing and shall contain provisions which are functionally identical to and consistent with the provisions of this Contract, including, but not limited to, the body of this Contract, Appendix A – Standard Clauses for New York State Contracts and, if applicable, Appendix B. Unless waived in writing by the DEPARTMENT, all subcontracts between the CONTRACTOR and subcontractors shall, to the extent feasible, expressly name the DEPARTMENT as the sole intended third party beneficiary of such subcontract. The DEPARTMENT reserves the</p>	No, the Department cannot accept this proposed alternate language.

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		right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the DEPARTMENT a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the DEPARTMENT.	
27.	Attachment 8, Section IX.A- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>The work shall be commenced and shall be actually undertaken within such time as the DEPARTMENT may direct by notice, whether by mail, e-mail, or other writing, pursuant to the terms of this Contract whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the DEPARTMENT may prescribe as specified in the Contract</p>	See Answer to Question # 18
28.	Attachment 8, Section IX.E.1- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>Any materials, articles, papers, etc., developed by the CONTRACTOR, solely and exclusively for the DEPARTMENT, under or in the course of performing this Contract shall contain the following, or similar acknowledgment, "Funded by the New York State Department of Health." Any such materials must be reviewed and approved by the DEPARTMENT for conformity with the policies and guidelines of the DEPARTMENT prior to dissemination and/or publication. It is agreed that As agreed to by the parties, such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The DEPARTMENT reserves the right to disallow funding for any educational materials not approved through its review process.</p>	No, the Department cannot accept this proposed alternate language.
29.	Attachment 8, Section IX.E.3- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>No report, document or other data produced in whole or in part with the funds provided under this Contract may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data</p>	No, the Department cannot accept this proposed alternate language.

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		developed pursuant to this Contract, without express written permission of the DEPARTMENT. Notwithstanding anything in the foregoing, CONTRACTOR shall retain ownership of its operational products	
30.	Attachment 8, Section IX.E.4- New York State Department of Health Contract	Proposed alternative language: All reports, data sheets, documents, etc. generated under this Contract shall be the sole and exclusive property of the DEPARTMENT, to the extent that the reports, data sheets, documents and/or service, do not contain Contractor's Confidential Information or pre-existing materials. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the DEPARTMENT or its authorized agents.	No, the Department cannot accept this proposed alternate language.
31.	Attachment 8, Section IX.F- New York State Department of Health Contract	Proposed alternative language: The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information which is obtained by it through its performance under this CONTRACT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York, except as otherwise provided in this Contract and the Business Associate Agreement.	No, the Department cannot accept this proposed alternate language.
32.	Attachment 8, Section IX.I.3- New York State Department of Health Contract	Proposed alternative language: Termination (for Non-Responsibility): Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate DEPARTMENT officials or staff, this contract may be terminated by Commissioner of Health or his or her designee at the CONTRACTOR's expense where the Contractor is determined by the Commissioner of health or his or her designee to be non-responsible.	No, the Department cannot accept this proposed alternate language.
33.	Attachment 8, Section IX.J- New York State Department of Health Contract	Proposed alternative language: CONTRACTOR shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the DEPARTMENT from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property and intellectual	See Answer to Question # 18

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		<p>property, caused by any intentional act or negligence of CONTRACTOR, its agents, employees, partners or subcontractors, without limitation; provided, however, that the CONTRACTOR shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the DEPARTMENT. The CONTRACTOR will have no liability under this Contract for any consequential, special, indirect, incidental, or punitive damages, even if they are aware of the possibility of the loss or damages. Contractor will not be responsible for any claims, losses, or damages sustained as a result of the actions, or failure(s) to act, by any Retail Pharmacy, drug manufacturer or other pharmaceutical providers or other third party not under control of Contractor pursuant to this Contract.</p>	
34.	Attachment 8, Section IX.L.1- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled by the DEPARTMENT or the CONTRACTOR, its subcontractors, or others under the CONTRACTOR'S or its subcontractor's control. Force majeure includes, but is not limited to, acts of God, pandemics, both known and unknown, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the CONTRACTOR or the DEPARTMENT in the performance of this Contract where non-performance, by exercise of reasonable diligence, cannot be prevented. The CONTRACTOR shall provide the DEPARTMENT with written notice of any force majeure occurrence as soon as the force majeure occurrence giving rise to a delay in CONTRACTOR'S performance under this Contract is known.</p>	See Answer to Question # 18
35.	Attachment 8, Section IX.L.4- New York State Department of Health Contract	<p>Proposed alternative language:</p> <p>In addition, the DEPARTMENT reserves the right, at its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should Should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply, then both parties shall work together to reach an equitable adjustment. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (a) the volatility is due to causes outside the control of the CONTRACTOR; (b) the volatility affects the marketplace or industry, not just the particular source of supply utilized for performance of this Contract;</p>	No, the Department cannot accept this proposed alternate language.

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		(c) the effect on pricing or availability of supply is substantial; and (d) the volatility so affects the CONTRACTOR'S performance that continued performance of this Contract would result in a substantial loss,	