

## **Department of Banking and Insurance**

### **REQUESTS FOR PROPOSALS FOR Arbitrations between Pharmacy Benefit Managers and Carriers or Pharmacies pursuant to L. 2023, c. 107**

Bid Reference Number:

RFP Issue Date: December 20<sup>th</sup>, 2024

Questions Due: January 6<sup>th</sup>, 2025

Proposals Due: January 17<sup>th</sup>, 2025

State of New Jersey

Department of Banking and Insurance

# Department of Banking and Insurance

## REQUESTS FOR PROPOSALS FOR Arbitrations between Pharmacy Benefit Managers and Carriers or Pharmacies pursuant to L. 2023, c. 107

### 1.0 INFORMATION FOR BIDDERS

#### 1.1 PURPOSE AND INTENT

The State of New Jersey, Department Banking and Insurance (Department or State) is soliciting proposals from nationally recognized, independent organizations that specialize in arbitration with the intent to select an organization to conduct the arbitrations in accordance with a recently enacted statute, L. 2023, c. 107 (Chapter 107). Chapter 107 requires Pharmacy Benefit Managers (PBM) to provide an internal appeal mechanism to resolve any dispute raised by a carrier or pharmacy under their contracts or other agreements with the PBM. Any dispute regarding the determination of an internal appeal conducted by the PBM may be referred to arbitration. The organization selected pursuant to this solicitation will conduct those arbitrations.

The intent of this Request for Proposal (RFP) is to award a Contract to a responsible Bidder whose Quotation, conforming to this RFP, is most advantageous to the State, price and other factors considered. The State, however, reserves the right to separately procure individual requirements that are the subject of the Contract during the contract term, when deemed by the Department of Banking and Insurance to be in the State's best interest.

The State of New Jersey (NJ) Standard Terms and Conditions ("SSTC") and Waivered Contracts/Delegated Purchase Authority Supplement to the SSTC ("Waiver Supplement") accompanying this RFP will apply to all contracts made with the State of NJ. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise. The SSTC and Waiver Supplement is available at the following url:

<https://nj.gov/treasury/purchase/forms/CombinedStateofNewJerseyStandardTermsandConditionsandWaiveredSupplement.pdf>.

Bidders intending to subcontract and have work performed outside the United States should carefully read N.J.S.A. 52:34-13.2.

#### 1.2 BACKGROUND

P.L.2023, c.107 (PBM) calls for arbitration proceedings to resolve any dispute raised by a carrier or pharmacy, regardless of whether the carrier or pharmacy benefits manager has a contract to challenge maximum allowable costs. All requests shall be submitted in

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accordance with the required timeframes detailed in this Bid Solicitation {RFP} or requested by Department Contract Manager (DCM).

#### 1.3 **KEY EVENTS**

##### 1.3.1 **Electronic Question and Answer Period**

The Department will electronically accept questions and inquiries from all potential bidders via email at [do bi.purchasing@do bi.nj.gov](mailto:do bi.purchasing@do bi.nj.gov).

- The Bid Reference Number should be clearly referenced in the subject line.
- Questions regarding the Standard Terms & Conditions and exceptions to mandatory requirements should contain requested changes.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet.

##### 1.3.2 **Deadline for Submission of Proposals**

In order to be considered for award, the proposal must be received by the Department on or before the due date and time as indicated on the cover sheet.

Interested Vendors must submit a Proposal Response no later than 5:00 pm Friday, January 17<sup>th</sup>, 2025, unless the submission date is modified in an addendum to this RFP. Please submit a copy of the Proposal Response via e-mail at [do bi.purchasing@do bi.nj.gov](mailto:do bi.purchasing@do bi.nj.gov).

**ANY PROPOSAL NOT RECEIVED BY THE DATE AND TIME INDICATED  
ON THE COVER SHEET WILL BE REJECTED.**

##### 1.3.3 **Bidder Responsibility**

The bidder assumes sole responsibility for the complete effort required in submitting a proposal in response to the RFP. It is the sole responsibility of the bidder to be knowledgeable as to all of the requirements of this RFP. No special consideration will be given after proposals are received because of a bidder's failure to be knowledgeable as to such requirements.

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#### **1.3.4 Cost Liability**

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a proposal in response to this RFP.

#### **1.4 ORDER OF PRECEDENCE OF CONTRACTUAL TERMS**

The Contract awarded, and the entire agreement between the parties, as a result of this RFP shall consist of: (1) the final RFP, including amendments thereto, if any, (2) State Of NJ Standard Terms and Conditions And Waivered Contracts/Delegated Purchase Authority Supplement to the State of NJ Standard Terms and Conditions with all , (3) a Bidder's Quote, (4) other negotiated document, and/or (5) third party document. In the event of a conflict in the terms and conditions among the documents comprising this Contract, the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking is as noted above.

## **2.0 SCOPE OF WORK**

### **2.1 Vendor Requirements**

- A. Possess a minimum of three (3) years' experience in prescription drug pricing Arbitration on behalf of State or federal government agencies.
- B. Have access to and experience in using health care pricing benchmark data or other pharmacy pricing databases.
- C. Employ or contract with medical professionals as necessary.
- D. The Vendor must have the capacity to accept requests for arbitration and the arbitration fees electronically.
- E. Review all submitted Arbitration request and determine the eligibility of the dispute for Arbitration pursuant to PBM Statute and the Department's implemented bulletin/rules.
- F. The Vendor shall collect and process fees in accordance with Section 2.3.4 below.
- G. The Vendor shall complete a review of the request for arbitration submitted by the initiating party pursuant to Section 2.3.2 below.
- H. The Vendor shall perform the arbitration proceeding based on the documentation submitted. There will be no in-person or telephonic hearings conducted.
- I. The Vendor shall conduct an arbitration review, issue a determination, and communicate its findings electronically to DOBI, with complete statements of the issues, findings, and

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conclusions on which the determination is based, and the medical, billing or other support; therefore, within 30 days after receipt of the required documentation necessary to make a determination.

- J. The Vendor shall release its decision to the parties electronically. At DOBI's option, review of the arbitrator's findings may be waived.
- K. The determination is binding on the parties.
- L. If the determination favors the initiating party, payment of the award must be made by the PBM within ten (10) business days of the date of the determination.
- M. If the arbitrator determines that a PBM has withheld, denied, or reduced the payment in violation of the provisions of the Act, the arbitrator shall order the PBM to make payment of the claim.
- N. The arbitrator shall not award legal fees or costs.

#### **2.2 Requests for Binding Arbitration**

The Vendor shall reject a request for arbitration when such a request is made in excess of 90 days after the carrier or pharmacy's receipt of the PBM's written determination on the internal claims appeal, or in excess of 90 days after the date that a PBM's determination of the internal claims appeal was due where a PBM has not provided a written notification on the provider's internal claims appeal. Proof of the PBM's receipt of a claims appeal is required, either by certified mail receipt or other delivery method showing date of actual receipt. If a timely request for arbitration has been rejected for insufficient information, a resubmitted request is deemed timely if received within 15 calendar days of the issuance of the rejection; no additional fee is required from the initiating party. If a timely request for arbitration is resubmitted with all the required information greater than 15 calendar days after the issuance of a rejection for insufficient information, the Vendor may impose an additional review fee on the initiating party not to exceed an additional one-half of the review fee. If the Vendor rejects the resubmitted request for arbitration, an initiating party must submit a new filing for consideration. A new filing made in excess of 90 days after the provider's receipt of the PBM's appeal determination shall be rejected as untimely.

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#### **2.3 Eligibility Requirements**

##### **2.3.1 Carrier or Pharmacy arbitration eligibility**

The Vendor shall reject an application for binding arbitration where such a request is made with respect to a health benefits plan that was not delivered or issued for delivery in New Jersey.

##### **2.3.2 Review of a request for arbitration**

The Vendor shall conduct a review of the initiating party's arbitration request and accept it for processing if the Vendor determines that:

1. The dispute which is the subject of the arbitration is of an issue that was determined pursuant to the internal appeal mechanism established by a PBM pursuant to the Act.
2. The initiating party has made reasonable efforts to comply with the internal appeal mechanism available.
3. The initiating party has provided all information required to conduct the review, including the completed arbitration request form. If all such information is not provided, the Vendor shall consider the arbitration request to be incomplete.
4. An initiating party has included one-half of the review fee and one-half of the arbitration fee with the initiating party's request for arbitration.
5. If one-half of the review fee and one-half of the arbitration fee is not included, the Vendor shall consider the arbitration request to be incomplete.

##### **2.3.3 Review Completion**

The Vendor shall complete its review and issue its decision in accordance with Section 2.3.5 below within 30 days from receipt of all documentation necessary to complete the review.

##### **2.3.4 Arbitration fees**

1. The request for arbitration shall be accompanied by the initiating party's full share of the review and arbitration fees. The Vendor shall retain the initiating party's review fee if arbitration requests are rejected, in whole or in part, based on information submitted by the initiating party; the arbitration fee submitted by the initiating party shall be refunded.

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2. If the initiating party's request and payment for the arbitration is accepted, the Vendor shall collect the responding party's share of the review and arbitration fees. The initiating and responding parties are each responsible for one half of the review and one half of the arbitration fee; and
3. The Vendor shall retain both the initiating and responding parties' review fee if the request for arbitration is initially accepted but later rejected as ineligible for arbitration based on the information, in whole or in part, submitted by the responding party; however, no arbitration fees will be retained. The Vendor shall withhold the initiating and responding parties' review and arbitration fees once the Vendor has issued notification to the initiating and responding parties that the matter has been reviewed and accepted for arbitration, even if the arbitration is discontinued by either party. The responding party is responsible for its full share of the review and arbitration fees.

#### **2.3.5 Arbitration Process**

1. The Vendor shall conduct an arbitration review upon acceptance of the arbitration request. The review shall determine whether the carrier or pharmacy was properly or improperly reimbursed and whether the PBM's payment determination should be upheld, reversed, or modified, unless upon receipt of additional documentation, the arbitrator reconsiders the matter and determines it to be ineligible for arbitration; and
2. The Vendor shall conduct arbitration proceedings pursuant to the rules of its organization, including rules of discovery subject to confidentiality and non-disclosure requirements established by State or federal rules and regulations and law, the timeframes established by State law for completion of the review and issuance of a determination, and use of certain forms established by DOBI. In reaching this determination, the Vendor shall take into consideration all information submitted by the parties and information deemed appropriate in the opinion of the Vendor including but not limited to: pertinent billing records; carrier or pharmacy documentation reports and other documents submitted by the parties; any applicable, generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards and associations; and any applicable policies, clinical protocols and/or practice guidelines utilized by the PBM. All determinations made by the Vendor shall be consistent with the evidence presented as well as applicable recognized standards of arbitration best practices. The Vendor's decision shall identify with specificity the policies, practice

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guidelines, nationally recognized claim payment databases, and clinical protocols or other standards relied upon in making its decision. If there are no issues eligible for arbitration, then the Vendor shall reject the arbitration and notify the parties pursuant to Section 2.4.1 below. The Vendor shall not be required to return the initiating party's share of the arbitration fee.

#### **2.4.1 Notification of Vendor Review**

The Vendor shall complete the review and notify the parties in writing as to whether the arbitration has been accepted and if not so accepted, the reasons therefore, within five (5) business days of receipt of the request for arbitration.

#### **2.4.2 Documentation Request**

If the Vendor determines that additional documentation or information is necessary, it shall request that the Parties submit the documentation or information electronically within 10 calendar days of the Vendor's written request.

#### **2.4.3 Parties compliance with Vendor documentation requests**

The Vendor shall request that the parties submit arbitration documentation, electronically, within ten (10) calendar days of receipt of a documentation request.

#### **2.4.4 Processing the Arbitration Decision**

The Vendor shall, at the option of the Department Contract Manager, provide the written arbitration decision of the Vendor to the Department Contract Manager to determine if the review has met DOBI's processing requirements. The Department Contract Manager shall have the option to review, and subsequently authorize distribution of the Vendor's written decision prior to the Vendor's distribution of the decision, within timeframes determined by DOBI.

#### **2.4.5 Arbitration Decision Processing**

The Vendor's arbitration decision shall:

1. Be sent, electronically and in hard copy format, to the initiating party, the responding party and the DCM, with a cover letter of transmittal signed by a responsible representative of the Vendor.
2. The written decision of the Vendor shall be signed by the arbitrator and countersigned by the Medical Director.



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3. Shall list the documentation and evidence/criteria reviewed and reference sources relied upon in making the decision. The written decision shall explain each and every basis of the Vendor's determination, including a statement of the issue(s) in dispute; findings of fact; a statement of the amount, to be awarded to the prevailing party; and any criteria and reference sources relied upon. The arbitration award may be vacated or modified only in accordance with N.J.S.A. 2A:24-1 et seq.

#### **2.4.6 Cooperation with Vendor**

1. The Vendor shall report to DOBI on a party's non-cooperation and non-compliance with the arbitration process. If a party does not respond to the Vendor's requests for documentation within the period requested by the Vendor, the Vendor may draw an adverse inference with respect to the party's failure to provide the requested information and may deem the dispute resolved in favor of the compliant party; and
2. The Vendor may bill a non-cooperative or non-compliant party its share of the review and arbitration fees. Multiple instances of unfair and abusive practices by initiating parties may serve as a basis for restricting or denying access to the arbitration process. Such matters shall be brought to DOBI's attention before any action is taken.

#### **2.5 Staffing**

##### **2.5.1 Requirements and Qualifications**

The Vendor shall provide the following staffing positions:

1. Medical Director shall be licensed to practice medicine in the State of New Jersey and provide the responsibilities outlined in Section 2.5.2 below of this RFP; and
2. Arbitrators shall:
  - a. Possess experience with Arbitration, mediation, or other equivalent dispute resolution, including, experience in Health Care Benefits, Pharmacy Benefits coverage and/or payment matters, preferably in the capacity of an Attorney, Paralegal, Pharmacist, Nurse or other Healthcare Management Professional.
  - b. Be trained to conduct Arbitrations, and if possible, certified to conduct Arbitrations; and
  - c. Take continuing education courses, related to the arbitration field, during the term of the RFP

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#### **2.5.1.1 Vendor Arbitrators**

Within 10 calendar days of RFP award, the Vendor shall submit a list of its Arbitrators to the DCM. The list shall include:

1. The Arbitrator's name.
2. Summary of qualifications, consistent with RFP
3. Include samples of decisions issued.
4. If applicable, the professional license number.
5. State in which the license has been issued.
6. Board certification of each arbitrator.
7. Qualifications, for new Arbitrators shall be:
  - A. Consistent with RFP
  - B. Submitted to the DCM in advance of performing Arbitration duties.

#### **2.5.1.1.1 Staffing Changes/Reduction**

Changes in the Vendor's Arbitration staff shall be reported in writing to the DCM, no later than 10 calendar days prior to the change. Staffing reductions due to circumstances beyond the Vendor's control (e.g., illness, immediate termination, etc.), notification shall be provided no later than five days after the date of the reduction.

#### **2.5.1.2 Arbitrator objectivity**

The Vendor shall ensure:

1. The objectivity of arbitrators.
2. The quality of the reviews meets acceptable standards for application of the standards as described in this RFP Section 2.3.5 above to the specific facts of each case under review; and
3. Arbitrators have no conflict of interest.

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#### **2.5.2 Medical Director Responsibilities**

The Medical Director shall be responsible for the direction and provision of quality reviews provided by the Arbitrators, including, but not limited to:

- A. Coordinating, supervising and overseeing the functioning of the arbitrators' services;
- B. Evaluating the medical aspects of the review and arbitration;
  - 1. Medical records.
  - 2. Identification and application standards of care; and
  - 3. Use of coding rules and medical procedures
- C. Overseeing the continuing in-service education of the arbitrators;
- D. Providing clinical direction and leadership to ensure continuous quality improvement of the review and arbitration process;
- E. Establishing policies and procedures regarding the standard operations of the review and arbitration process;
  - 1. Establishing policies and procedures for the medical review portion of the arbitration process.
- F. Establishing a system for monitoring the quality of the review and the arbitration process; and
- G. Establishing mechanisms for ensuring the verification and review of the arbitrators credentials.
- H. Providing clinical direction and leadership to ensure continuous quality improvement of the review and arbitration process; and

#### **2.6 Deliverables**

##### **2.6.1 Template Documents (pro forma)**

Within 10 business days of RFP award, the Vendor shall submit to the Department Contract Manager a copy of all pro forma correspondence used by the arbitration organization. This shall include letters of notice for whether the arbitration was accepted for processing and for the arbitration decision. This shall be approved by the Department Contract Manager prior to use.

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#### **2.6.2 Statistical information**

Vendor shall maintain information and statistics in an electronic format that can be fully accessed and utilized by DOBI for review and publication purposes. DOBI shall establish and may amend from time to time the type of information and statistics to be maintained by the Vendor.

#### **2.6.3 Vendor related business arrangements**

Vendor has the continuing obligation to update disclosures made to the State regarding interest and relationships detailed in response to RFP Section 2.6.3.1

##### **2.6.3.1 DISCLOSURE OF INTERESTS AND RELATIONSHIPS**

To ensure the integrity of the arbitration and mediation process, the Vendor {Bidder} shall disclose ownership interests and relationships with all carriers, health care facilities, and other health care providers to enable the State to ascertain whether any conflict of interest exists. At a minimum, the Vendor {Bidder} shall disclose:

A. Any interest Vendor holds in any firm, association, partnership, corporation or other business organization, including any subsidiary, parent, or related company thereof, that may reasonably be expected to be involved in a health claim. For purposes of this section, "interest" means any ownership or control of any profits, assets, or operations of a business organization. Include both the name of the business organization and the nature of the interest (number of shares held, percentage of partnership, etc.);

B. Any professional relationship Vendor's principal officers or directors have with any person, firm, association, partnership, corporation or other business organization, including any subsidiary, parent, or related company thereof, that may reasonably be expected to be involved in a health claim. Include both the name of the business organization and the nature of the professional relationship;

C. Any personal relationship that Vendor's principal officers or directors have with any principal officer or director of any firm, association, partnership, corporation or other business organization, including any subsidiary, parent, or related company thereof, that may reasonably be expected to be involved in a health claim. Include the name of each principal officer or director, the name of the business organization and the nature of the personal relationship.

For any interest, professional relationship, or personal relationship identified in response to the items enumerated above, Vendor shall identify proposed methods or solutions for handling the

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interest or relationship in the event the State determines the interest, professional relationship, or personal relationship presents a conflict of interest.

Disclosures made pursuant to this section will not necessarily preclude a Vendor from being awarded this Contract. However, the State reserves the right to determine, on a case by case basis, whether a conflict of interest exists such that award of the Contract to Vendor would not be in the State's best interest.

The State may request further information from Vendor regarding any disclosures made in response to this RFP Section 2.6.3 Above.

#### **2.6.4 Monthly reports**

The Vendor shall submit reports to the DCM within 30 calendar days following the end of each month in an electronic database format determined by DOBI. The monthly report shall at a minimum include:

1. Each arbitration matter for the month.
2. Name of carrier or pharmacy and PBM, listed by category.
3. Date arbitration request was received by the Vendor from the initiating party or DOBI and the date the review was completed.
4. Number of rejected arbitrations, listed by category, pharmacy, or carrier name, PBM, and reasons for rejection.
5. Number of withdrawn or settled disputes, listed by category, pharmacy, or carrier name, PBM, and basis of the arbitration.
6. Number of arbitrations conducted, listed by category, pharmacy, or carrier name, PBM and arbitrator.
7. Date of Vendor determination and number of calendar days to complete the arbitration from date of receipt of all required documentation.
8. Summary of the issue of each case.
9. Summary of the Vendor's determination for each case.
10. Party's compliance or non-compliance with the arbitration timeframes, requests for information and the Vendor's arbitration determination.

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11. Date and amount billed to the pharmacy or carrier and PBM (cost of arbitration).
12. Date and amount paid by any party.
13. Number of pending arbitrations at the end of the month.
14. Number of arbitrations assigned, closed, and pending per arbitrator at the end of the month; and
15. Time required to complete each arbitration, and
16. Additional information as required by DOBI from time to time.

#### **2.6.5 Annual reports**

The Vendor shall submit annual cumulative reports to the Department Contract Manager within 30 calendar days of the end of each calendar year, in a database determined by DOBI for generating additional reports. The annual report shall contain cumulative information as set forth in Section 2.2 above and include, but not be limited to:

- A. The number of arbitrations conducted, listed by pharmacy or carrier and PBM:
- B. The outcome of each arbitration.
- C. Number of arbitrations pending at the close of the year.
- D. Number of arbitrations assigned, concluded and pending at the close of the year by arbitrator.
- E. The time required to complete each arbitration from date of receipt of all required documentation; and
- F. An independent financial report on the revenues and the expenses associated with conducting the arbitration process.

#### **2.7.5 Invoicing/Billing Requirements**

##### **2.7.5.1 Submission of Vendor bill to PBM**

The Vendor shall submit a bill to the respective PBM at the time the Vendor accepts the provider's arbitration request for review. The bill shall be for one-half of the review fee and one-half of the arbitration fee. At the discretion of the Vendor and with the consent of the PBM, alternate billing arrangements are permissible, such as monthly or bulk billings.

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#### **2.7.5.2 Contents of bill**

The bill to the PBM shall be itemized and shall conform to the fee structure set forth in the Vendor's Quote.

#### **2.7.5.3 PBM non-compliance**

Upon receipt of the bill referred to above, the PBM shall pay the Vendor one-half of the review and one-half of the arbitration fees as billed by the Vendor, subject to alternate billing arrangements pursuant to Section 2.9 below. Should a PBM fail to pay the bill, the Vendor shall notify the DCM. Following notification to the DCM of a failure by the PBM to remit the billed fee, the Vendor may make a determination favorable to the provider.

#### **2.8 HIPAA and BBA compliance**

The Vendor shall, at all times, in performance of this RFP ensure that it maintains compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Balanced Budget Act (BBA) of 1997 governing the protection of patient information. Such regulatory compliance shall include the erasure and deletion of all personal, confidential information that may be contained on all personal computers and their drives prior to the disposal, or any other disposition that may be required, of such informational technology equipment as per requirements as set forth by the US Department of Defense (DoD) 5220.22-M Standard. See [http://www.hipaadvisory.com/tech/data\\_removal.htm](http://www.hipaadvisory.com/tech/data_removal.htm) for additional information.

#### **2.9 RFP or PBM competition**

The Vendor shall have a procedure for reporting to the DCM the Vendor's intention to compete for RFP or other arrangements, or any other action by the Vendor which may result in the Vendor becoming a competitor of a PBM.

#### **2.10 Project Management Plan**

The Vendor must develop and submit a Project Management Plan (PMP). The PMP shall:

1. Be submitted to the DCM for approval, no later than 10 business days of the RFP effective date.
2. Demonstrate a clear understanding of the overall complexity of the project and all associated tasks.
3. Address the operational aspects of the projects; and

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4. Be continuously updated during the course of the RFP Term.

#### 3.0 PROPOSAL PREPARATION AND SUBMISSION

##### 3.1 PROPOSAL PREPARATION – GENERAL

- 3.1.1 In order to be considered, a proposal must arrive at the Department in accordance with the instructions on the RFP cover page. Bidders are cautioned to allow adequate delivery time to ensure time delivery of proposals. Late proposals shall be ineligible for consideration.
- 3.1.2 The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's cover page, in preparing and submitting its proposal.
- 3.1.3 All proposals must be typed or written in ink and signed by the bidder. Electronic signatures are not acceptable.

##### 3.2 PRICING

The Vendor must complete all price lines on the Price Sheet/Schedule (ATTACHMENT - A) including the Firm Fixed Prices for the Initial Review of Arbitration and the Completed Arbitration for each of the five (5) years of the initial RFP term.

By submitting a proposal, the bidder certifies that the price(s) and amount of its proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.

##### 3.3 PROPOSAL SUBMISSION

The bidder must email the original signed "Agency Request for Proposal" form (CC-120) along with all other required documents to the email address provided below.

###### 3.3.2

##### Required Emailed Proposal Submission

The bidder must email the signed "Agency Request for Proposal" form (CC-120) along with other documents to [do bi.purchasing@do bi.nj.gov](mailto:do bi.purchasing@do bi.nj.gov) on or before the bid due date listed on the RFP cover sheet.

It is the **bidder's responsibility** to confirm Department's receipt of emailed proposals.



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#### **3.4 DOCUMENTS REQUIRED BEFORE WITH PROPOSAL**

3.4.1 Ownership Disclosure Form

3.4.2 Disclosure of Investment Activities in Iran Form

3.4.3 Disclosure of Prohibited Activities in Russia and Belarus

#### **3.3 TECHNICAL QUOTE**

The Bidder shall describe its approach and plans for accomplishing the work outlined in the Scope of Work. The Bidder must set forth its understanding of the requirements of this Bid Solicitation and its approach to successfully complete the Contract. The Bidder should include the level of detail it determines necessary to assist the Evaluation Committee in its review of the Bidder's Quote.

#### **3.4 MANAGEMENT OVERVIEW**

The Bidder should set forth its overall technical approach and plans to meet the requirements of the Bid Solicitation in a narrative format. This narrative should demonstrate to the Evaluation Committee that the Bidder understands the objectives that the Contract is intended to meet, the nature of the required work, and the level of effort necessary to successfully complete the Contract. The narrative should demonstrate that the Bidder's approach and plans to undertake and complete the Contract are appropriate to the tasks and subtasks involved.

The Bidder's response to this section should demonstrate to the Evaluation Committee that the Bidder's detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate, and that the Bidder's Quote will lead to successful Contract completion.

#### **3.5 CONTRACT MANAGEMENT**

The Bidder should describe its specific plans to manage, control and supervise the Contract to ensure satisfactory Contract completion according to the required schedule. The plan should include the Bidder's approach to communicate with the State Contract Manager including, but not limited to, status meetings, status reports, etc.

#### **3.6 CONTRACT SCHEDULE**

The Bidder should include a draft Contract schedule. If key dates are a part of this Bid Solicitation, the Bidder's schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

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The Bidder should identify the Contract scheduling and control methodology to be used and should provide the rationale for choosing such methodology.

#### **3.7 ORGANIZATIONAL EXPERIENCE**

The Bidder should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the Bidder's qualifications, and capabilities to perform the services required by this RFP. The Bidder should include the level of detail it determines necessary to assist the Evaluation Committee in its review of Bidder's Quote.

#### **3.8 LOCATION**

The Bidder should include the address of where responsibility for managing the Contract will take place. The Bidder should include the telephone number and name of the individual to contact.

#### **3.9 ORGANIZATION CHARTS**

The Bidder should include an organization chart, with names showing management, supervisory and other key personnel (including Subcontractor management, supervisory, or other key personnel) to be assigned to the Contract. The chart should include the labor category and title of each such individual.

#### **3.10 RESUMES**

Detailed resumes should be submitted for all management, supervisory, and key personnel to be assigned to the Contract. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing Contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- A. The individual's previous experience in completing each similar Contract;
- B. Beginning and ending dates for each similar Contract;
- C. A description of the Contract demonstrating how the individual's work on the completed Contract relates to the individual's ability to contribute to successfully providing the services required by this RFP; and
- D. With respect to each similar Contract, the name and address of each reference together with a person to contact for a reference check and a telephone number.

The Bidder should provide detailed resumes for each Subcontractor's management, supervisory, and other key personnel that demonstrate knowledge, ability, and experience relevant to that part of the work which the Subcontractor is designated to perform.

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#### **3.11 EXPERIENCE WITH CONTRACTS OF SIMILAR SIZE AND SCOPE**

The Bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the Bidder's ability to successfully complete services similar to those required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract listed, the Bidder should provide two (2) names and telephone numbers of individuals for contracting party. Beginning and ending dates should also be given for each contract.

The Bidder must provide details of any negative actions taken by other contracting entities against them in the course of performing these projects including, but not limited to, receipt of letters of potential default, default, cure notices, termination of services for cause, or other similar notifications/processes. Additionally, the Bidder should provide details, including any negative audits, reports, or findings by any governmental agency for which the Bidder is/was the contractor on any contracts of similar scope. In the event a Bidder neglects to include this information in its Quote, the Bidder's omission of this necessary disclosure information may be cause for rejection of the Bidder's Quote by the State.

The Bidder should provide documented experience to demonstrate that each Subcontractor has successfully performed work on contracts of a similar size and scope to the work that the Subcontractor is designated to perform in the Bidder's Quote. The Bidder must provide a detailed description of services to be provided by each Subcontractor.

#### **3.12 DIVERSITY PLAN**

The Bidder should include a Diversity Plan that sets forth whether and to the extent it can demonstrate that it or its subcontractor(s) have considered the following items in N.J.A.C. 17:27-5.5:

(a) In addition to the vendor's or subcontractor's compliance with the requirements set forth in the mandatory language at N.J.A.C. 17:27-3.5 or 3.6, as applicable, the Department of Banking and Insurance shall consider the following factors in its determination of whether a vendor or subcontractor has acted in good faith:

1. Whether the vendor or subcontractor has agreed to make a good faith effort to adhere to targeted minority and women employment goals;
2. Whether the vendor or subcontractor has met or documented that it has made a good faith effort to meet targeted employment goals;

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3. Whether the vendor or subcontractor has adopted an Equal Employment Opportunity (EEO) Policy;
4. Whether the vendor or subcontractor has posted an EEO Policy on the job site bulletin board;
5. Whether the vendor or subcontractor has disseminated the EEO Policy to its workers through various means including company meetings, preconstruction job meetings, written notices, etc.;
6. Whether the vendor or subcontractor has posted Federal or State issued EEO posters on the job site bulletin board;
7. Whether the vendor or subcontractor has identified an EEO Officer and established job duties in writing for such position;
8. Whether the vendor or subcontractor has developed a basic complaint procedure;
9. Whether the vendor or subcontractor has knowledge of and has considered the general availability of minorities and women having requisite skills in the immediate labor area;
10. Whether the vendor or subcontractor has knowledge of and has considered the percentage of minorities and women in the total workforce in the immediate labor area;
11. Whether, when the opportunity has presented itself, the vendor or subcontractor has considered promoting minority and women employees within its organization;
12. Whether the vendor or subcontractor attempted to hire minorities and women based upon the anticipated expansion, contraction and turnover of its workforce;
13. Whether the vendor or subcontractor has the ability to consider undertaking training as a means of making all job classifications available to minorities and women and whether it has done so;
14. Whether the vendor or subcontractor has utilized the available recruitment resources to attract minorities and women with requisite skills, including, but not limited to, public and private training institutions, job placement services, referral agencies, newspapers, trade papers, faith-based organizations, and community-based organizations;
15. Whether the vendor or subcontractor has requested qualified minorities and women from a labor union with whom it has an exclusive hiring or referral arrangement;
16. Whether the vendor or subcontractor has actively recruited beyond the traditional sources to attract minority and women applicants;
17. Whether the vendor or subcontractor has reviewed all personnel actions to ensure actions are taken in compliance with the company's EEO policy; and
18. Whether the vendor or subcontractor has retained records of employment and personnel actions and payroll records for a three year-period from the date of the contract or project closing.

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#### 3.13 CONFIDENTIALITY/COMMITMENT TO DEFEND

Pursuant to the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., or the common law right to know, Quotes can be released to the public in accordance with N.J.A.C. 17:12-1.2(b) and (c).

The Bidder should submit a completed and signed Confidentiality/Commitment to Defend Form with the Quote. In the event that the Bidder does not submit the Confidentiality form with the Quote, the State reserves the right to request that the Bidder submit the form after Quote submission.

After the opening of sealed Quotes, all information submitted by a Bidder in response to a RFP is considered public information notwithstanding any disclaimers to the contrary submitted by a Bidder. Proprietary, financial, security and confidential information may be exempt from public disclosure by OPRA and/or the common law when the Bidder has a good faith, legal/factual basis for such assertion.

When the RFP contains a negotiation component, the Quote will not be subject to public disclosure until a notice of intent to award a Contract is announced.

As part of its Quote, a Bidder may request that portions of the Quote be exempt from public disclosure under OPRA and/or the common law. The Bidder must provide a detailed statement clearly identifying those sections of the Quote that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. The State will not honor any attempts by a Bidder to designate its State-Supplied Price Sheet, Price List/Catalog, and/or the entire Quote as proprietary and/or confidential, and/or to claim copyright protection for its entire Quote. If the State does not agree with a Bidder's designation of proprietary and/or confidential information, the State will use commercially reasonable efforts to advise the Bidder. Copyright law does not prohibit access to a record which is otherwise available under OPRA.

The State reserves the right to make the determination as to what to disclose in response to an OPRA request. Any information that the State determines to be exempt from disclosure under OPRA will be redacted.

In the event of any challenge to the Bidder's assertion of confidentiality that is contrary to the State's determination of confidentiality, the Bidder shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Bidder. The State assumes no such responsibility or liability.

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In order not to delay consideration of the Quote or the State's response to a request for documents, the State requires that Bidder respond to any request regarding confidentiality markings within the timeframe designated in the State's correspondence regarding confidentiality. If no response is received by the designated date and time, the State will be permitted to release a copy of the Quote with the State making the determination regarding what may be proprietary or confidential.

#### **4.0 CONTRACT AWARD**

##### **4.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD**

- 4.1.1 Signed State of New Jersey Standard Terms and Conditions
- 4.1.2 Disclosure of Investigations and Other Actions Involving Bidder
- 4.1.3 Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions
- 4.1.4 Chapter 271 Vendor Certification and Political Disclosure Form
- 4.1.5 MacBride Principals Form
- 4.1.6 Proof of Business Registration
- 4.1.7 Certificate of Insurance / ACORD – must contain limits outlined within State of New Jersey Standard Terms and Conditions
- 4.1.8 Source Disclosure Form
- 4.1.11 Affirmative Action Compliance

The "Information Sheet and Checklist for Waivers and Delegated Purchasing Authority (DPA) Transaction" form is attached for the bidder's reference. This form can be found at <https://www.nj.gov/treasury/purchase/forms.shtml> under the heading "Vendor DPA and Waiver Forms". While on this website, bidders can click on the form name listed on the checklist to access the form.

Hard copies of the state required forms are attached to the RFP.

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#### 5.0 GENERAL CONTRACT TERMS

The Contractor shall have sole responsibility for the complete effort specified in this Contract. Payment will be made only to the Contractor or to the authorized dealers/distributors, if applicable. The Contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this Contract shall not in any way relieve the Contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the deliverables, goods or services, shall not be construed as a waiver of any rights that the State may have arising out of the Contractor's performance of this Contract.

#### 5.1 CONTRACT TERM AND EXTENSION OPTION

The base term of this Contract shall be for a period of Five years.

#### 5.2 OWNERSHIP OF MATERIAL

- A. **State Data** – The State owns State Data. Contractor shall not obtain any right, title, or interest in any State Data, or information derived from or based on State Data. State Data provided to Contractor shall be delivered or returned to the State of NJ upon thirty (30) days' notice by the State or thirty (30) days after the expiration or termination of the Contract. Except as specifically required by the requirements of the Bid Solicitation, State Data shall not be disclosed, sold, assigned, leased or otherwise disposed of to any person or entity other than the State unless specifically directed to do so in writing by the Department Contract Manager.
- B. **Work Product; Services** – The State owns all Deliverables developed for the State in the course of providing Services under the Contract, including but not limited to, all data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the Services required under the Contract.
- C. **Vendor Intellectual Property; Commercial off the Shelf Software (COTS) and Customized Software** – Contractor retains ownership of all Vendor Intellectual Property, and any modifications thereto and derivatives thereof, that the Contractor supplies to the State pursuant to the Contract, and grants the State a non-exclusive, royalty-free license to use Vendor Intellectual Property delivered to the State for the purposes contemplated by the Contract for the duration of the Contract including all extensions. In the event

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Contractor provides its standard license agreement terms with its Quote, such terms and conditions must comply with *Bid Solicitation Section 1.3 – Order of Precedence of Contractual Terms*.

- D. **Third Party Intellectual Property** – Unless otherwise specified in the Bid Solicitation that the State, on its own, will acquire and obtain a license to Third Party Intellectual Property, Contractor shall secure on the State's behalf, in the name of the State and subject to the State's approval, a license to Third Party Intellectual Property sufficient to fulfill the business objectives, requirements and specifications identified in the Contract at no additional cost to the State beyond that in the Quote price. In the event Contractor is obligated to flow-down commercially standard third party terms and conditions customarily provided to the public associated with Third Party Intellectual Property and such terms and conditions conflict with Bid Solicitation requirements, including the SSTC, the State will accept such terms and conditions with the exception of the following: indemnification, limitation of liability, choice of law, governing law, jurisdiction, and confidentiality. The Bid Solicitation including the SSTC shall prevail with respect to such conflicting terms and conditions. In addition, the State will not accept any provision requiring the State to indemnify a third party or to submit to arbitration. Such terms are considered void and of no effect. Third party terms and conditions should be submitted with the Quote. If Contractor uses Third Party Intellectual Property, Contractor must indemnify the State for infringement claims with respect to the Third Party Intellectual Property. Contractor agrees that its use of Third Party Intellectual Property shall be consistent with the license for the Third Party Intellectual Property, whether supplied by the Contractor, secured by the State as required by the Bid Solicitation, or otherwise supplied by the State.
- E. **Work Product; Custom Software** – The State owns all Custom Software which shall be considered "work made for hire", i.e., the State, not the Contractor, subcontractor, or third party, shall have full and complete ownership of all such Custom Software. To the extent that any Custom Software may not, by operation of the law, be a "work made for hire" in accordance with the terms of the Contract, Contractor, subcontractor, or third party hereby assigns to the State, or Contractor shall cause to be assigned to the State, all right, title and interest in and to any such Custom Software and any copyright thereof, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- F. **State Intellectual Property** – The State owns all State Intellectual Property provided to Contractor pursuant to the Contract. State Intellectual Property shall be delivered or returned to the State of NJ upon thirty (30) days' notice by the State or thirty (30) days after the expiration or termination of the Contract. The State grants Contractor a non-exclusive, royalty-free, license to use State Intellectual Property for the purposes



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contemplated by the Contract. Except as specifically required by the requirements of the Bid Solicitation, State Intellectual Property shall not be disclosed, sold, assigned, leased or otherwise disposed of to any person or entity other than the State unless specifically directed to do so in writing by the State Contract Manager. The State's license to Contractor is limited by the term of the Contract and the confidentiality obligations set forth in *Bid Solicitation Section 6 – Data Security Requirements – Contractor Responsibility*.

- G. **No Rights** – Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon Contractor any right, title, or interest in State Intellectual Property or any intellectual property that is now owned or licensed to or subsequently owned by or licensed by the State. Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Vendor Intellectual Property that is now owned or subsequently owned by Contractor. Except as expressly set forth in the Contract, nothing in the Contract shall be construed as granting to or conferring upon the State any right, title, or interest in any Third Party Intellectual Property that is now owned or subsequently owned by a third party.

#### 5.3 SUBSTITUTION OF STAFF

If a Contractor needs to substitute any management, supervisory or key personnel, the Contractor shall identify the substitute personnel and the work to be performed. The Contractor must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted for the individual(s) proposed as substitute(s) who must have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The Contractor shall forward a request to substitute staff to the DCM for consideration and approval. No substitute personnel are authorized to begin work until the Contractor has received written approval to proceed from the DCM.

#### 5.4 CONFIDENTIALITY

Upon Contract award, the Contractor shall sign a non-disclosure agreement pertaining to any confidential information it receives with respect to its work conducted under this Contract. The Contractor shall maintain all State information including data and documents as confidential. The Contractor shall maintain, including but not limited to, all Clean Energy Program participant personal identifying information as confidential.

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#### **5.5 ADDITIONAL WORK AND/OR SPECIAL PRODUCTS**

In addition to the confidentiality obligations outlined in section 5.6, the parties further agree that the Contractor shall not begin performing any additional work or special projects without first obtaining written approval from the DCM.

In the event of additional work and/or special projects, whether requested by the Department of Banking and Insurance or suggested by the Contractor, the Contractor must present a written proposal to perform the additional work to the DCM. The Contractor's proposal should provide justification for the necessity of the additional work and the relationship between the additional work and the base Contract work must be clearly established by the Contractor in its proposal.

The Contractor's written proposal must provide a detailed description of the work to be performed broken down by task and subtask. The proposal should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written proposal must detail the cost necessary to complete the additional work in a manner consistent with the Contract. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the Contractor in the Contractor's original proposal and State-Supplied Price Sheet accepted by the Department of Banking and Insurance in response to this RFP. Whenever possible, the price schedule for additional work or special projects should be a firm, fixed price for the performance of the additional work or special project. The firm, fixed price should specifically reference and be tied directly to costs submitted by the contractor in its original proposal. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

No additional work and/or special project may commence without the DCM's written approval. In the event the Contractor proceeds with additional work and/or special projects without the DCM's written approval, it shall be at the Contractor's sole risk. The State shall be under no obligation to pay for work performed without the DCM's written approval.

#### **5.6 PROFESSIONAL LIABILITY INSURANCE**

Section 4.2 of the SSTC is supplemented with the following:

Professional Liability Insurance: The Contractor shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out of the professional obligations performed pursuant to the requirements of this Contract. The insurance shall be in the amount of not less than \$1,000,000 or higher if appropriate per each occurrence, and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during

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the term of this Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

#### **6.0 QUOTE EVALUATION AND AWARD**

##### **6.1 COMMISSIONER RIGHT TO ACCEPT OR REJECT A QUOTE**

The Commissioner reserves the right to reject any or all Quotes, or to award in whole or in part if deemed to be in the best interest of the State to do so.

##### **6.2 RECIPROCITY FOR JURISDICTIONAL BIDDER PREFERENCE**

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of NJ will invoke reciprocal action against an out-of-State Bidder whose state or locality maintains a preference practice for its in-state Bidders. The State of NJ will use the annual surveys compiled by the Council of State Governments, National Association of State Procurement Officials, or the National Institute of Governmental Purchasing or a State's statutes and regulations to identify States having preference laws, regulations, or practices and to invoke reciprocal actions. The State of NJ may obtain additional information as it deems appropriate to supplement the stated survey information.

A Bidder may submit information related to preference practices enacted for a State or Local entity outside the State of NJ. This information may be submitted in writing as part of the Quote response, including name of the locality having the preference practice, as well as identification of the county and state, and should include a copy of the appropriate documentation, i.e., resolution, regulation, law, notice to Bidder, etc. It is the responsibility of the Bidder to provide documentation with the Quote or submit it to the Department within five (5) Business Days after the deadline for Quote submission. Written evidence for a specific procurement that is not provided to the Commissioner within five (5) Business Days of the public Quote submission date may not be considered in the evaluation of that procurement, but may be retained and considered in the evaluation of subsequent procurements.

##### **6.3 REVISION OR SUPPLEMENTATION OF QUOTE**

After the Quote submission Date, unless requested by the State as noted below, Bidder contact with the Department of Banking and Insurance regarding this Bid Solicitation and the submitted Quote is not permitted until after contract award.

After the Quotes are reviewed, one (1), some or all of the Bidders may be asked to revise certain aspects of or supplement its Quote. Revision or supplementation of a Quote may provide

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different or missing information. BPU may make one or more requests for revision or supplementation of the Quote.

The Department reserves the right to request that a Bidder to explain, in detail, how the Quote price was determined.

#### **6.4 STATE'S RIGHT TO CHECK REFERENCES**

The State may also consult with clients of the Bidder during the evaluation of Quotes. Such consultation is intended to assist the State in making a Contract award that is most advantageous to the State.

#### **6.5 EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

##### **6.5.1 TECHNICAL EVALUATION CRITERIA**

The following criteria will be used to evaluate and score Quotes received in response to this Bid Solicitation. Each criterion will be scored, and each score multiplied by a predetermined weight to develop the Technical Evaluation Score:

- A. Personnel: The qualifications and experience of the Bidder's management, supervisory, and key personnel assigned to the Contract, including the candidates recommended for each of the positions/roles required;
- B. Experience of firm: The Bidder's documented experience in successfully completing jobs of a similar size and scope including bidder's experience providing complex business optimization and profitability analyses,
- C. Ability of firm to complete the Scope of Work based on its Technical Quote: The Bidder's demonstration in the Quote that the Bidder understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Contract including its ability to support the reporting and timeline expectations of the SOW, and the project management approach being utilized by the vendor.

##### **6.5.2 PRICE EVALUATION**

For evaluation purposes, Bidders will be ranked from lowest to highest according to the total Quote price located on the State-Supplied Price Sheet accompanying this Bid Solicitation.

#### **6.6 QUOTE DISCREPANCIES**

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In evaluating Quotes, discrepancies between words and figures will be resolved in favor of words. Discrepancies between Unit Prices and totals of Unit Prices will be resolved in favor of Unit Prices. Discrepancies in the multiplication of units of work and Unit Prices will be resolved in favor of the Unit Prices. Discrepancies between the indicated total of multiplied Unit Prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures.

#### **6.7 NEGOTIATION**

After evaluating Quotes, the Department may enter into negotiations with one (1) Bidder or multiple Bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Bidder or multiple Bidders. Negotiations will be structured by the Department to safeguard information and ensure that all Bidders are treated fairly.

Negotiations will be conducted only in those circumstances where it is deemed by the Department to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Bidder is advised to submit its best technical and price Quote in response to this Bid Solicitation since the State may, after evaluation, make a Contract award based on the content of the initial submission.

#### **6.8 BEST AND FINAL OFFER (BAFO)**

The Department of Banking and Insurance may invite one (1) Bidder or multiple Bidders to submit a Best and Final Offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Bidder's most advantageous previously submitted technical and price Quote.

The Department may conduct more than one (1) round of BAFO in order to attain the best value for the State.

BAFOs will be conducted only in those circumstances where it is deemed by the Department to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Bidder is advised to submit its best technical and price Quote in response to this Bid Solicitation since the State may, after evaluation, make a Contract award based on the content of the initial submission.

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#### 6.9 POOR PERFORMANCE

A Bidder with a history of performance problems may be bypassed for consideration of an award issued as a result of this Bid Solicitation. The following materials may be reviewed to determine Bidder performance:

- A. Contract cancellations for cause pursuant to *State of NJ Standard Terms and Conditions Section 5.7(B)*;
- B. Information contained in Vendor performance records;
- C. Information obtained from audits or investigations conducted by a local, state or federal agency of the Bidder's work experience;
- D. Current licensure, registration, and/or certification status and relevant history thereof; or
- E. Bidder's status or rating with established business/financial reporting services, as applicable.

Bidders should note that this list is not exhaustive.

#### 6.10 RECOMMENDATION FOR AWARD

After the evaluation of the submitted Quotes is complete, the Department will recommend to the Commissioner for award of, the responsible Bidder(s) whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. Commissioner may accept, reject or modify the recommendation of the Department of Banking and Insurance.

#### 6.11 CONTRACT AWARD

Contract award will be made with reasonable promptness by written notice to that responsible Bidder, whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price, and other factors considered. Any or all Quotes may be rejected when the Commissioner determines that it is in the public interest to do so.

#### 7.0 GLOSSARY

##### **RFP Specific Definitions/ACRONYMS**

Act – P.L.2023, c.107 (C.17B:27F-1.1 et al.)

**Arbitration** - Process of determining a dispute between a carrier or pharmacy and a PBM, in accordance with the Act.

**Arbitration Organization** - Nationally recognized, independent organization that specializes in arbitration with which DOBI has contracted for the purpose of conducting an arbitration proceeding and making a determination.

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**Arbitrator** - Individual employed by the arbitration organization who is responsible for conducting an arbitration proceeding and making a determination.

**Carrier** - An insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State.

**Dispute** - Payment issue that remains unresolved following an internal appeal between the carrier or pharmacy and the PBM.

**DOBI** - Department of Banking and Insurance.

**Health Benefits Plan** – A benefits plan which pays hospital or medical expense benefits for covered services, or prescription drug benefits for covered services, and is delivered or issued for delivery in this State by or through a carrier or any other sponsor. For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits plan shall not include the following plans, policies or contracts: accident only, credit disability, long-term care, Medicare supplement coverage; TRICARE supplement coverage, coverage for Medicare services pursuant to a contract with the United States government, the State Medicaid program established pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a worker's compensation or similar law, the State Health Benefits Program, the School Employees' Health Benefits Program, or a self-insured health benefits plan governed by the provisions of the federal "Employee Retirement Income Security Act of 1974," 29 U.S.C. s.1001 et seq., coverage under a policy of private passenger automobile insurance issued pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.), or hospital confinement indemnity coverage.

**Parties** – A PBM and a pharmacy or carrier participating in an arbitration.

**Pharmacy** - Any place in the State, either physical or electronic, where drugs are dispensed, or pharmaceutical care is provided by a licensed pharmacist. A pharmacy includes a pharmacy services administrative organization acting on behalf of the pharmacy. A pharmacy does not include a medical office under the control of a licensed physician.

**Pharmacy services administrative organization** - An entity operating within the State that contracts with independent pharmacies to conduct business on their behalf with third-party payers.

**Pharmacy benefits manager or PBM** - A corporation, business, or other entity, or unit within a corporation, business, or other entity, that, pursuant to a contract or under an employment relationship with a carrier, a self-insurance plan or other third-party PBM, either directly or through an intermediary, administers prescription drug benefits on behalf of a purchaser.