

**REQUEST FOR PROPOSALS FROM  
FINANCIAL ORGANIZATIONS FOR THE PROVISION OF STABLE VALUE  
STRUCTURE MANAGEMENT SERVICES FOR THE DEFERRED COMPENSATION  
PLAN FOR EMPLOYEES OF THE STATE OF NEW YORK AND OTHER  
PARTICIPATING PUBLIC JURISDICTIONS (“PLAN”)**

**October 9, 2020**

**Designated Contact for this Procurement:  
Thomas H. Shingler, Senior Vice President, Callan LLC  
David Miller, Assistant Vice President, Callan LLC**

**All contact/inquiries shall be made by e-mail to the following addresses:  
shingler@callan.com  
miller@callan.com**

**REQUESTS FOR PROPOSALS FROM FINANCIAL ORGANIZATIONS  
FOR THE PROVISION OF STABLE VALUE STRUCTURE MANAGEMENT  
SERVICES FOR THE DEFERRED COMPENSATION PLAN FOR EMPLOYEES OF  
THE STATE OF NEW YORK AND OTHER PARTICIPATING PUBLIC  
JURISDICTIONS (“PLAN”)**

**I. PURPOSE**

The State of New York, through the New York State Deferred Compensation Board (the “Board”), is seeking formal written proposals from Financial Organizations to provide Stable Value Structure Management Services for the New York State Deferred Compensation Plan (the “Plan”).

To be eligible for selection, a “Financial Organization” must be an organization duly authorized to do business in the State of New York which is (i) registered as an investment advisor under the Investment Advisors Act of 1940, as amended; or (ii) a bank, as defined in that Act; or (iii) an insurance company qualified under the laws of more than one state to manage, acquire or dispose of any assets of plans which meet the requirements for qualification under the Internal Revenue Code, governmental plans and eligible state deferred compensation plans.

This Request For Proposal (“RFP”) is divided into six sections and three appendices. The sections include (I) Purpose, (II) Background, (III) Product Design Requirements, (IV) Timing and Procedures Governing Submission of Proposals, (V) Selection Process and (VI) Conditions. The Contract Questionnaire is found in Appendix A, a Vendor Responsibility Questionnaire is found in Appendix B, and the Application for a Competitively Bid Contract (Form ADM-28) is included as Appendix C. In addition to the six sections and the appendices, this RFP includes the following exhibits:

- Exhibit A: Standard Clauses for all New York State Contracts
- Exhibit B: Affirmative Action/Equal Employment Opportunity/Non-Discrimination Policy
- Exhibit C: The Plan’s Procurement Guidelines
- Exhibit D: Plan Assets by Investment Option
- Exhibit E: Stable Income Fund Assets by Category
- Exhibit F: Stable Income Fund Investment Guidelines
- Exhibit G: Proposed Stable Value Fund Structure
- Exhibit H: Policy and Guidelines for Implementing the New York State Procurement Lobbying Law, Sections 139-j and 139-k of the New York State Finance Law
- Exhibit I: Consultant Disclosure Form A and Form B
- Exhibit J: Diversity Statistics Grid
- Exhibit K: Iran Investment Policy

Pursuant to the guidelines in Section IV, the designated contact persons for this contracting opportunity during the restricted period will be Tom Shingler, Callan LLC and David Miller, Callan LLC.

## **II. BACKGROUND**

The Plan is intended to satisfy the requirements for an eligible deferred compensation plan under Section 457 of the Internal Revenue Code of 1986, as amended (the “IRC”) applicable to governmental employers described in Section 457(e)(1)(B) of the IRC (“Section 457 Plan”). As such, amounts of compensation deferred under the Plan, including any income attributable thereto, will not be included in the gross income of Plan participants until the taxable year or years in which such amounts are actually distributed to the participant or the participant’s beneficiary. A copy of the current Plan Document, which was amended and restated on April 25, 2017, is available on the Board’s website, [www.deferredcompboard.ny.gov](http://www.deferredcompboard.ny.gov). The Plan is governed by Section 457 of the IRC, Section 5 of the New York State Finance Law, Parts 9000 – 9006 of the New York State Code of Rules and Regulations (the “Rules and Regulations”), and all other applicable federal, state, and local laws and regulations.

Participants are currently given a choice of directing their contributions to any or all of the following investment options: (i) various no-load mutual funds and collective investment trusts managed by independent investment advisers and held by an independent trustee; (ii) active and passive international equity portfolios managed by several underlying independent investment advisers and held by an independent trustee; (iii) a Stable Income Fund consisting of a cash account, one insurance company separate account and wrapped fixed income separate accounts managed by registered investment advisers. All assets of the Plan are held in trust to comply with Section 457(g) of the IRC.

The benefits provided to any participant under the Plan depend upon the aggregate amount deferred and the investment performance of the investment options in which such amounts are invested. Plan participants may direct their future contributions to any of the investment options which are offered, may change their investment direction as to future contributions, and, subject to certain restrictions, may transfer their accumulated contributions and earnings from one investment option to another, on a daily basis. In addition, participants may take loans from their plan accounts.

The Plan’s stable value option, called the Stable Income Fund (the “Fund”), currently has the largest asset base among all the Plan’s investment options. As of June 30, 2020, the Stable Income Fund assets totaled \$8.3 billion, with 137,167 participants allocating assets to this

investment option. The primary objective of the Stable Income Fund is to provide a stable rate of return along with preservation of principal and liquidity.

As of June 30, 2020, active participants' assets invested within the Fund were categorized by age range as follows:

4% under age 39,  
13% between 40-49,  
44% between 50-59,  
32% between 60-69, and  
7% were 70 and over.

Inactive participants' assets invested within the Fund categorized by age range were as follows:

2% under age 49,  
18% between 50-59,  
48% between 60-69, and  
31% were 70 and over.

As of June 30, 2020, the Stable Income Fund consisted of approximately 76% wrapped fixed income portfolios, 19% insurance company separate accounts and 5% cash. Exhibit E provides a detailed view of the Stable Income Fund allocations. The duration of the portfolio as of 6/30/2020 was 3.1 years.

The Fund includes a cash account to provide for daily liquidity. The cash account is targeted to hold 5% of the Fund for daily liquidity, but may fluctuate between 1% and 25% of the overall Fund over time as necessary to meet liquidity and other demands. All participant contributions to the Fund are initially deposited into the cash account. Payments made from the Fund at any time as a result of transfers by participants to other investment options under the Plan, distributions to participants, or withdrawals by participants under the Plan, are currently made from the cash account. While it is anticipated that contributions to the cash account will be sufficient to meet the Plan's need for liquidity, the Board reserves the right to make payments, on a pro-rata basis from assets of the Fund to the extent that current cash flow is not sufficient.

The following organizations currently provide administrative, custodian, trustee and investment services to the Fund:

Administrative Service Agency:      Nationwide Retirement Solutions

Custodian/Trustee:                      State Street Bank & Trust Company

Stable Value Structure Manager: GSAM Stable Value, LLC.

Stable Income Fund:

Wrapped Fixed Income Managers:

Earnest Partners  
Income Research + Management  
Jennison Associates  
JP Morgan  
Longfellow  
MacKay Shields  
Voya  
Wellington  
Wells Capital

Insurance Company Separate Accounts:

MassMutual (assets managed by Barings)

Book Value Wrappers:

New York Life  
MassMutual  
Prudential  
State Street Bank  
Voya

**Additional Plan Investment Options:**

As of June 30, 2020 approximately \$19.8 billion of Plan assets were invested in no-load mutual funds, collective investment trusts and two separately managed international equity accounts. The funds are diversified among seven broad asset classes and include a range of categories and styles. Pertinent to the Stable Income Fund, the Plan includes a suite of Target Date Retirement Trusts. Please see exhibit D for a complete list of investment options.

The Plan also includes a Self-Directed Investment Account (“SDIA”) through which a participant may access approximately 2,000 mutual funds and ETFs beyond the Plan’s core menu of investment options. Investments in the SDIA, which holds approximately 0.7% of Plan assets, are limited to 50% of a participant’s account balance in the Plan. Other rules regarding

the Plan’s core menu of investment options as well as the SDIA may be obtained from the Plan’s web site, [www.nysdcp.com](http://www.nysdcp.com).

### **III. PRODUCT DESIGN REQUIREMENTS**

The Board is seeking proposals from financial organizations to provide Stable Value Structure Management Services to the Plan. The Stable Value Structure Manager (“Structure Manager”) will be responsible for managing the aggregate risk characteristics of the Fund. These risk characteristics include the Fund’s duration, liquidity strategy, sector exposure, and credit quality. Stable Income Fund Investment Guidelines issued by the Board are attached as Exhibit F. The Structure Manager will also be responsible for managing and executing the cash flow management strategy and allocating assets to strategies and managers. The Structure Manager will be responsible for (i) the advice, analysis and recommendations with regard to the selection of underlying portfolio managers; including the cash manager and wrapped separate account fixed income portfolios, (ii) insurance company separate accounts, and the (iii) the monitoring of such managers and portfolios. The Structure manager will be responsible for the selection, monitoring, and structuring of book value wrap contracts, and will be required to enter into book value wrap contacts on behalf of the Plan.

The Structure Manager will be required to provide monthly written reports reviewing and evaluating the performance of the Fund, assessing its compliance with the Board’s investment policies applicable to the Fund, and the preparation of a quarterly Fund Fact Sheet for publication to participants. At least one senior representative of the Structure Manager will be required to attend quarterly meetings with the Board. Appropriate staff of the Structure Manager will be required to work, on an as needed basis, with the Board’s Staff and Legal Counsel in addressing matters related to the Fund.

### **IV. TIMING AND PROCEDURES GOVERNING SUBMISSION OF PROPOSALS**

#### *A. Calendar of Events*

<u>Activity</u>	<u>Date</u>
1. Distribution of Request for Proposals	October 9, 2020
2. Closing Date for Submission of Questions	October 21, 2020
3. Publication of Responses to Questions	October 30, 2020
4. Closing Date for Submission of Proposals	November 20, 2020

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| 5. Entry of product information into Callan’s database             | November 20, 2020                            |
| 6. Review by Consultant and Board representatives<br>January, 2021 | November 20, 2020 to<br>January, 2021        |
| 7. Notification of Finalists Selected                              | January, 2021                                |
| 8. Interview with Board, Board Staff, and/or Board Advisors        | To be determined<br>January or February 2021 |
| 9. Anticipated Notification of Successful Proposers                | On or about<br>February 19, 2021             |
| 10. Commencement of Contract                                       | On or about<br>October 1, 2021               |

Any questions regarding this Request For Proposals must be submitted via email no later than October 21, 2020, addressed to the designated contacts (Tom Shingler at [shingler@callan.com](mailto:shingler@callan.com) and David Miller at [miller@callan.com](mailto:miller@callan.com)).

Responses to all questions will be provided on the Board’s web site no later than October 30, 2020 under Procurement Opportunities and Information for Vendors link. The firms that submitted the questions will not be identified.

*B. Form and Substance of Proposals*

All proposals must be in writing, must describe the scope of the services to be performed and clearly indicate all fees for the provision of services described herein. Proposals must fully disclose any sponsorship or similar arrangement. Proposals must indicate whether, over the past five years, your organization, or any officer or principal of your organization, has been involved in any business litigation or legal proceeding, including, without limitation, those matters involving the State or any agency or political subdivision thereof. If so, provide a brief explanation and indicate the current status.

All contracts with the Board are subject to the terms of the Plan and the Rules and Regulations of the Board (“the Rules and Regulations”), as both are amended from time to time, and all other applicable requirements of State law. A copy of the Rules and Regulations may be obtained from the Board’s web site, [www.goer.ny.gov/nysdcp](http://www.goer.ny.gov/nysdcp). The Board currently submits contracts to the Attorney General and Comptroller of the State of New York for review and approval. All other materials related to this RFP will be posted in the Procurement section of the web site. The

Office of the State Comptroller requires that the selected proposer(s) meet the definition of a Responsible Vendor as defined by the State (for more information see [www.osc.ny.gov](http://www.osc.ny.gov)). The Board is required to conduct a review of a prospective contractor to provide reasonable assurances that the vendor is responsible. In addition, all contractors must abide by the State's affirmative action considerations and the Plan's Procurement Guidelines. Please note that all proposals must be submitted by the same legal entity that fills out the Vendor Responsibility Questionnaire and that would be the party to the contract with the Board, if selected. The Vendor Responsibility Questionnaire, Form ADM-288, is attached as Appendix B.

The standard clauses for State contracts, Affirmative Action Guidelines and the Plan's Procurement Guidelines are attached hereto as Exhibits A, B and C, respectively. Plan assets by Investment Option and Stable Income Fund Assets by category are attached hereto as Exhibits D and E. Stable Income Fund Investment Guidelines are attached as Exhibit F. The Policy and Guidelines for Implementing the New York State Procurement Lobbying Law, Sections 139-j and 139-k of the New York State Finance Law is attached as Exhibit H.

To receive consideration, all proposals must include fully completed: a) **Appendix A: Stable Value Structure Manager Questionnaire**; b) **Appendix B: Vendor Responsibility Questionnaire**; **Appendix C: Application for a Competitively Bid Contract (ADM 28)** attached hereto and must conform to the specifications set forth in this RFP. The proposal must also contain a representation that the proposal complies with all requirements of the Rules and Regulations. Neither the Board nor the State will be liable for any costs of work performed in the preparation and production of a proposal or for any work performed prior to the execution of an effective contract. By submitting a proposal, each proposer agrees not to make any claims for or to have any right to damages because of any misunderstanding or misinterpretation of the specifications, because of any misinformation or lack of information or because such proposer is not selected to provide the services proposed.

To receive consideration, an electronic copy must be sent **via email to Callan LLC** by 5pm on **November 20, 2020**. **For the Board submission**, e-mail to: [Sharon.Lukacs@nysdcp.com](mailto:Sharon.Lukacs@nysdcp.com).

**For Callan RFP submission**, please use the following Callan email address: [newyorkstatedcboard@callan.com](mailto:newyorkstatedcboard@callan.com)

All respondents must enter their stable value product information into the Callan database in order to be considered for this RFP. Callan will review the database as part of the evaluation process. Information on requirements for entering information into the database can be found at: <http://www.callan.com> (click on "Manager Questionnaire").

1. All candidates **must** ensure that they completely identify the firm and product information, in the above database. Additionally, candidates must ensure that the information is current and accurate as of September 30, 2020.
2. Candidates with multiple eligible products must provide database entries for each product.
3. There is no fee for entering information into the database.

If you have questions regarding submitting data into Callan's database, please contact Kyle Fekete ([fekete@callan.com](mailto:fekete@callan.com)).

Any proposer that receives a copy of this RFP, but who declines to make a proposal, is requested to send a formal "Decline to Make a Proposal" letter to the addresses noted above.

### *C. Award or Rejection*

All qualified proposals will be evaluated and an award will be made to the financial organization whose proposal represents the best value to the Plan and whose proposal is determined to be in the best interest of the Plan's participants.

The evaluation of proposals will be made by the Board based on information supplied in the financial organization's proposal including, without limitation, the provision of references by the proposer and verification thereof and such other available information which the Board determines advisable to consult. Callan LLC will be the independent consultant to the Board in the selection process.

## **V. SELECTION PROCESS**

### *A. General Evaluation Criteria*

In selecting a financial organization in response to the RFP, the Board will use criteria that comply with the requirements of the Rules and Regulations including sections 9002.2 and 9003.3 thereof. Examples of information that will be evaluated to assess proposals against these criteria are as follows:

- (i) The qualification of the organization as evidenced by the experience, reputation, and clients over a substantial period of time;
  - a. Total value of assets for which the organization provides comparable services.
  - b. Client retention statistics and quality of client references (if contacted).
  - c. Independence and freedom from conflicts of interest.

- (ii) The ability of the organization to meet its contractual obligations and to provide the services set forth herein;
  - a. Stability of the firm as measured by its organizational structure and financial condition.
  - b. Organization's ability to provide the product described in Section III, Product Design Requirements.
  
- (iii) The organization's experience with plans that meet the requirement for qualification under the Code, including eligible state Section 457 Plans;
  - a. Experience providing services to 457, 401 (k) and 403 (b) plans.
  - b. Number of plans serviced by size and type and categories of services provided.
  
- (iv) The organization's ability to interface with financial organizations with which the Board might have contact.
  
- (v) The overall cost efficiency of the proposal;
  - a. Fee structure.
  - b. Supplemental costs involved.
  
- (vi) The overall quality and scope of the services to be provided.
  
- (vii) Additional Requirements:
  - a. The proposing firm must have a minimum of \$10 billion in Stable Value product assets under management as of 9/30/20. Additionally, the proposing firm must have a minimum of \$1 billion in stable value separate account assets under management as of 9/30/20. There is a strong preference for the proposing firm to have a minimum of three (3) clients with stable value fund assets exceeding \$500 million each, and at least one (1) client whose stable value assets exceed \$1 billion.
  - b. The proposing firm must possess a track record which demonstrates at least five (5) years of experience providing Stable Value Fund Management services to defined contribution plan clients.
  - c. The team who will be managing the proposed account must possess a minimum of five (5) years of experience managing stable value separate accounts as well as selecting and monitoring sub-advisors.
  - d. Proposing firms must attest in writing that neither the firm nor its key professionals will encounter a conflict of interest in providing the services requested.

- e. Proposing firm and its personnel have all authorizations, permits, licenses, and certifications as may be required under federal, state or local law to perform the services specified in this RFP at the time it submits a response to the RFP.
- f. Proposing firm will carry errors and omissions insurance or comparable instrument to cover negligent acts or omissions.

*B. Review by Investment Consultant, Board or Board Staff*

Based on the criteria described above, Callan LLC and Board staff will review and screen all bids and recommend finalists to the Board in January, 2021. All finalists will receive notice of their selection.

*C. Presentations to Board*

The Board, Board Staff and/or Board advisors will conduct interviews of selected finalists at a future date to be determined, in January or February 2021.

*D. Notification of Selected Financial Organization*

It is anticipated that the selected financial organization will be notified by the Board on or about February 19, 2021.

*E. Commencement of Contract*

Contract term with the selected financial organization will begin no earlier than October 1, 2021 or on such later date as may be specified by the Board.

*F. Terms of Contract*

The Board expects to enter into a contractual arrangement of up to five years as permitted by the Rules and Regulations of the Board.

*G. Contract Terms and Conditions*

The written contract with the awarded financial organization shall be a standard State contract and shall include, without amendment, the “Standard Clauses for New York State Contracts” (Exhibit A).

If awarded a contract, the financial organization will be required to submit certain forms and comply with the following information:

**Vendor Responsibility:**

The Board is required to conduct a review of a proposer to provide reasonable assurances that the vendor is responsible. Each proposer is required to complete a Vendor Responsibility Questionnaire, Form ADM-288 (see attached Appendix B). Such questionnaire requires a certification by the contractor certifying to the accuracy of the information provided thereon. Please note that all proposals must be submitted by the same legal entity that fills out the Vendor Responsibility Questionnaire and that would be the party to the contract with the Board, if selected.

The Board or designated Board staff will make a finding of responsibility or non-responsibility, considering any information that comes to its attention concerning the contractor's responsibility. The Board or designated Board staff will contact the contractor should potentially negative information come to their attention in the proposal. If the Board finds a contractor to be non-responsible, a written notice will be provided detailing the reason(s) for the preliminary determination and an opportunity to be heard before the determination is finalized.

A contractor is required to update their responsibility determination if a material event occurs during the contract term requiring an amendment.

**Tax Certification:**

State Tax Law Section 5-a requires that certain contractors with the Board must certify whether or not the contractor, its affiliates, its subcontractors and affiliates of the subcontractors are required to register to collect State sales and compensating use tax. If selected, the contractor must also certify that it is so registered with the State Department of Taxation and Finance ("DTF").

The selected proposer(s) will be required to complete and sign, under penalty of perjury the Contractor Certification Form ST-220-TD and submit a copy to the DTF and the Contractor Certification to Covered Agency Form ST-220—CA and submit a copy to the Board. More information regarding this requirement and copies of the required forms are available online at the Board's website, [www.goer.ny.gov/nysdcp](http://www.goer.ny.gov/nysdcp) (under the Procurement Opportunities and Information for Vendors link).

**State Consulting Services Reporting:**

Chapter 10 of the Laws of 2006 amended certain sections of the State Finance Law and the Civil Service Law requiring the disclosure of information regarding contracts for consulting services. The selected proposer must complete a State Consultant Services Form A “Contractors Planned employment from the contract start date through the end of the contract” in order to be eligible for a contract. Selected proposers will also be required to complete a State Consultant Services Form B, Contractor’s Annual Employment Report for each fiscal year included in the resulting contract. These reports must be filed with the Board, the Office of the State Comptroller, and the Department of Civil Service. Both forms are attached as Exhibit I. Additional information may be found at <http://osc.state.ny.us/agencies/gbull/g-226.htm>.

**Equal Employment Opportunity:**

All proposers must submit an “Equal Employment Opportunity (EEO) Policy Statement” on their letterhead and signed by an official of the Organization. The “EEO Policy Statement” must be submitted before a contract can be awarded.

**Non-Discrimination/Americans with Disabilities Act (ADA):**

The Plan does not discriminate on the basis of race, color, national origin, sex, religion, age, disability, or sexual orientation in the admission to, access to, or employment in its program or activities. A reasonable accommodation will be provided on request. Any product(s) developed as a result of this RFP must be in a format that can be converted for use by individuals with disabilities to meet the reasonable accommodation standards established by the Americans with Disabilities Act.

**Electronic Files or Data:**

If electronic files are to be exchanged as a part of this proposal or as a product of the contract, they must conform to the requirements of the Plan and the selected manager will be required to comply with the Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**Conflict of Interest:**

Proposers may be requested to provide evidence that the award of the contract from this Request for Proposals will not result in a conflict of interest with regard either to other work performed by the contractor, or to potential conflict of interest among specific contractor staff or subcontractors.

**Indemnification:**

No proposer will be entitled to include a provision in the contract providing indemnification rights to the proposer.

**Publicity:**

Publicity includes, but is not limited to, news conferences, news releases, advertising, brochures, reports, and/or presentations at conferences or meetings. The inclusion of materials, the name of the Plan, or other such reference to the Plan or the Board in any document or forum is considered publicity. News releases or any other public announcements regarding work to be performed under the contract may not be released without prior written approval from the Board.

**Freedom of Information Law and Proposer's Proposals:**

The purpose of the State's Freedom of Information Law ("FOIL"), which is contained in Public Officers Law Sections (POL) 84-90, is to promote the public's right to know the process of governmental decision making and to grant maximum public access to governmental records. Thus, a member of the public may submit a FOIL request for contracts awarded by the Board or for the proposals submitted to the Board in response to a Request For Proposal. After formal contract approval by the State Comptroller's Office, the proposal of the successful proposer and the proposals of the non-successful proposers are subject to disclosure under FOIL.

Pursuant to Section 87(2)(d) of Public Officers Law, the Board may deny access to those portions of proposals or portions of a successful proposer's contract which are trade secrets or submitted to the Board by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise. Please note that information, which you may claim as proprietary, copyrighted, or rights reserved is not protected from disclosure under FOIL.

**If there is information in your proposal that meets the definition set forth in Section 87(2)(d) of the Public Officers Law, you must so inform the Board in a letter accompanying your proposal.** This letter must contain the following information:

1. Identification by page, line, or other appropriate designation of that specific portion of the proposal which contains the information; **and**
2. A detailed justification of why disclosure of such information to the public under FOIL would cause substantial injury to your competitive position. Please note that the courts have ruled that a mere conclusory statement that certain information is a trade secret and that

disclosure would cause injury to your competitive position is **insufficient** to protect it from disclosure under FOIL.

**Failure to identify the information you believe should be protected by Section 87(2)(d) may result in such information being disclosed if a FOIL request is received.**

It is your responsibility to contact an attorney with any questions about the FOIL.

### **Relationship Between the Board and Contractor:**

The relationship of the selected financial organization to the Board shall be that of an independent contractor. In accordance with such status as an independent contractor, the contractor covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the Plan or the State by reason hereof; and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Plan, including but not limited to workers' compensation coverage, unemployment benefits, social security coverage, or retirement membership credit.

### **Information Security:**

Any selected contractor is required to comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). A contractor shall be liable for the cost associated with such breach if caused by Contractor's negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

### **Contract Termination Provision:**

The Board reserves the right to terminate any contract resulting from this RFP in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law Sections 139-j and 139-k was intentionally false or intentionally incomplete.

If a contractor fails to make the certifications required by Section 5-a of the New York State Tax Law, the contract cannot take effect. If during the term of the contract, the Tax Department or the covered agency discovers that a certification was false, then such false certification may subject the contractor to civil or criminal sanctions, and a finding of non-responsibility for future procurements. Under certain circumstances, the statute provides that the contract shall be subject

to termination if the covered agency determines that termination of the contract is in the best interest of New York State.

**Assurances:**

The proposer warrants that it has carefully reviewed the needs of the Board as described in the RFP, its attachments and other communications related to the RFP, and that it has familiarized itself with the specifications and requirements of the RFP and warrants that it can provide such services as represented in proposer's proposal. The proposer acknowledges and agrees that this RFP is subject to all applicable federal, state, and local laws, regulations, and policies, and the omission of or failure to reference any such law, regulation or policy in this RFP shall not be construed as a waiver of any requirement or obligation imposed by such law, regulation, or policy. The proposer agrees that it will perform all of its obligations in the resultant contract in accordance with all applicable federal, State, and local laws, regulations and policies. The proposer affirms that the terms of the RFP and the attachments do not violate any contracts or agreements to which it is a party, and that its other contractual obligations will not adversely influence its capabilities to perform under the contract. Proposers may be requested to provide evidence that the award of the contract from this RFP will not result in a conflict of interest with regard either to other work performed by the contractor, or to potential conflict of interest among specific contractor staff or subcontractors.

**Cancellation for Convenience:**

The Board retains the right to cancel the contract without reason and without penalty, provided that the Contractor is given at least twenty days written notice of its intent to cancel. This provision should not be understood as waiving the Board's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

**Force Majeure:**

A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosion, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Board in the performance of the Contract which non-performance, by exercise of reasonable diligence, cannot be prevented. Contractor shall provide the Board with written notice of any force majeure occurrence as soon as the delay is known.

Neither the Contractor nor the Board shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Board to be necessary to complete performance

by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

### **Rights Reserved:**

In order to serve the best interests of the Plan and its participants, the Board reserves the right to:

1. Postpone or cancel this Request For Proposals upon notification to all proposers.
2. Amend the specifications after their release with appropriate notice to all proposers.
3. Request proposers to present supplemental information clarifying their proposal, either in writing or in formal presentation.
4. Waive or modify minor irregularities in proposals received after prior notification to the proposer.
5. Reject any and all proposals received in response to this Request For Proposals.
6. Negotiate with the next highest assessed proposer if negotiating a contract with the selected proposer(s) cannot be accomplished within an acceptable time frame. No proposer will have any rights against the Board or the Plan arising from such negotiations.
7. Make any payment contingent upon the submission of specific deliverables.
8. The Board reserves the right to ask for a “best and final” fee proposal prior to vendor selection.

## **VI. CONDITIONS**

Responding financial organizations are advised to become familiar with all conditions, instructions, and specifications governing this Request For Proposals, as well as the Rules and Regulations and the terms and provisions of the Plan (all of the foregoing hereinafter referred to as the “Conditions”). The Conditions shall be incorporated by reference into the final contract. Once a proposal has been accepted, (i) the selected financial organization shall not refuse to enter into a contract where such refusal is based on an objection to any of the Conditions and (ii) the selected financial organization shall not be entitled to additional compensation, or to alter the terms of its proposal as a result of an objection to any of the Conditions. Responding financial organizations are further advised that the Board may refuse to accept any proposal not accompanied by a representation that the selected financial organization (i) will provide to the Board’s legal counsel within seven days of selection a contract complying with all terms required by this Request For Proposals; and (ii) will make available all resources necessary to ensure that an agreement acceptable to the Board is negotiated within thirty days of selection, or such other shorter period as the Board may announce prior to selection. The Board reserves the right, to the extent permitted by law, to make all final determinations about whether a financial organization

has adequately satisfied the Conditions. The Board shall not be deemed to have waived any requirement set forth in this RFP unless the Board agrees to such a waiver in writing.