

NYS Education Department
Return Services for Certain Secure State Exam Materials

IFB 16-001 Questions and Answers

1.) The contemplated Agreement requires the contractor to “indemnify and hold harmless the State and its officers and employees from claims, suits, action, damages and costs of every nature arising out of the provision of services pursuant to this Agreement.” (Agreement, Section IV (emphasis added)). This is a very broad and one-sided indemnification provision that is inconsistent with our standard commercial terms and conditions and could subject offerors to significant liability. We are concerned that this language would create an imbalance in the parties’ respective risk profiles.

1A **Question:** Would the State limit the contractor’s indemnification liability to third party claims related to property damage or bodily injury arising from the contractor’s negligent actions or omissions?

Answer: No, the language relating to indemnification cannot be altered.

1B **Question:** Would the State exempt the contractor from indemnification obligations where the claim results from the negligence of the State or its authorized users?

Answer: The language relating to indemnification cannot be altered..

2.) The IFB includes a number of requirements with respect to individually identifiable data and information security. For example, all confidential data must be stored on computer and storage facilities maintained within computer networks “behind appropriate firewalls.” (Agreement, Appendix R, ¶ 3). Additionally, the contractor is prohibited from “commingling” any data from outside sources into the data received by the State. (Agreement, Appendix R, ¶ 4) Other potentially burdensome requirements related to information security and safeguarding include the following:

- Providing training to officers or employees that will have access to student data or teacher or principal data (applies where personally identifiable data of students, teachers or building principals will be disclosed by the State) (Agreement, Appendix R, ¶ 5);
- Ensuring that the confidentiality provisions in Appendix R are flowed down to all subcontractors (Agreement, Appendix R, ¶ 8);
- Agreeing that the “server room” will remain a restricted access locked room with access “via security cards” (Agreement, Appendix R, ¶ 10);
- Requiring compliance with the New York State Information Security Breach and Notification Act (Agreement, Appendix A, ¶ 22) which includes a notification requirement to New York residents in the event of a breach of computerized data that includes private information.

These requirements are not applicable to the provision of small package delivery services. Under this contract, the State will not disclose Personally Identifiable Information or Individually Identifiable Data to contractors, and contractors will not store sensitive data for the State. We are concerned that including inapplicable terms could create ambiguity with regard to contractor obligations.

2A **Question:** Would the State consider removing these requirements?

Answer: . See paragraphs 13 and 14 of the Mandatory Requirements section of the IFB.

2B **Question:** Will the State please confirm our understanding that these and other information security obligations are not applicable?

Answer: See paragraphs 13 and 14 of the Mandatory Requirements section of the IFB.

3.) We typically incorporate our standard Rate and Service Guide and Tariff into public contracts with an express statement that the incorporation is not deemed to modify or amend any term or provision of the Contract. Moreover, in the event our standard commercial terms and conditions conflict with the terms of the Contract, the terms and provisions of the Contract would take precedence. Because the greatest value for the State is to acquire our services using best commercial practices, and because we intend to propose competitive pricing based on these practices, incorporation of our standard Tariff and Rate and Service Guide is beneficial to both parties.

Question: Would the State agree to incorporate the contractor's Tariff and Rate and Service Guide at the lowest level of the Agreement's Order of Precedence?

Answer: No.

4.) The IFB refers to the State's right to negotiate "a final best price" with the selected offeror (Reservation of Rights, Post Selection Procedures). We understand that this is not a "best price" in relation to other customers. Rather, it refers to the best price the contractor is willing to offer under this specific procurement.

Question: Please confirm that this understanding is correct.

Answer: The term "final best price" refers to this specific procurement.

5.) Do I need a Warehouse?

Answer: As stated in the IFB Mandatory Requirements (page 4 #4) Shipper may be required to hold materials at its facility for up to ten (10) business days prior to

delivery, especially during peak times. "All packages/materials must be locked and secured at all times while stored at the shipper's facilities." Packages/materials may be stored in locked trailers in the contractor's secured yard(s).

6.) Where can I find the bid contract?

Answer: The terms of the contract resulting from this IFB are contained within the IFB as well as the cost proposal.

7.) Can NYSED provide any more information about the volume of packages the contractor will be handling in accordance with the contract resulting from this IFB?

Answer: It is very difficult for NYSED to predict at this time what the actual volume of packages to be handled by the contractor will be in each of the three years of the contract resulting from this IFB. Most likely the volume at least in year one will be close to the lower end of the range provided in the IFB.