



## Office of Temporary and Disability Assistance

**KATHY HOCHUL**  
Governor

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Acting Commissioner

August 29, 2023

The following (Q & A) will serve as Amendment #3 to OTDA's Invitation for Bid (IFB) for Banking Services in Support of Centralized Collections and Enforcement, bid number 2023-03. Material in this Amendment supersedes any contradictory material in the IFB.

Please note that the due date for the submission of bids remains unchanged. All bids are due October 3, 2023 at 3:00 pm ET.

Question #	IFB Page #	IFB Section and Sub Section Reference #/Heading	Question	Answer
1	No Page Number exists	IFB, 6.0 Bid Proposal Submission	Would OTDA accept an emailed electronic proposal as opposed to a disc? Most printers no longer support disc.	No. Please see Bid Proposal Submission, Section 6.0 (pages 17-18) of the IFB.
2	No Page Number exists	IFB, 5.1 Bid Proposal & Appendix W. Scope of Work	We see that OTDA outlines what it would like to see in the Bid Proposal in IFB section 5.1. You ask for a variety of forms which is the norm. What is somewhat unusual is that you do not ask bidders to respond to the banking services Scope of Work found in Appendix W. Should we take that to mean that you simply want bidders to agree to the Scope of Work? And that you do not want them to address their specific solutions that will meet the Scope of Work requirements? This is of course absolutely fine, we just want to be sure. If it is possible to respond to this question at the bidders meeting that would be very helpful to all bidders as we gear up to begin developing our responses.	Correct, this procurement is an IFB and as referenced in the Method of Award, Section 8.0 (page 19), the award shall be made on the basis of lowest price to the responsible and responsive offeror.
3	1	Appendix W Scope of Work	Who are the incumbent bank(s)?	Bank of America, N.A. is the incumbent.
4	1	Appendix W Scope of Work	Can OTDA provide current analysis statements, detailing monthly volumes for each all 60 checking accounts so Contractor may fully understand scope of banking services for pricing?	An abbreviated version is included within Appendix S, and volumes are included in Appendix P. This should provide the information Offerors will need to provide a response to the IFB.
5	1	Appendix W Scope of Work	How long have you had a relationship with the current and primary provider?	This information is irrelevant to the current IFB.
6	1	Appendix W Scope of Work	Can OTDA provide the average monthly collected balances in all of the 60 checking accounts?	Average monthly balance for the 60 accounts: \$101,193,654.74.
7	1	Appendix W Scope of Work	What ERP system are you using?	OTDA does not employ an ERP system.
8	2	Appendix W Scope of Work 3. Ongoing Account Support e. Bank Statement	What format and what data is required on bank statement? What is being provided today? Is a sample available and / or format available?	Please see Appendix S, pages 137 and 138.
9	4	Appendix W Scope of Work f. State Date Check Report	Is an issue cancellation acceptable in lieu of a stop payment? Can OTDA provide a sample State Date Check Report? Is a transmitted state dated file acceptable?	Stop payment is required. Sample report is attached. OTDA requires a report rather than a file.
10	5	Appendix W Scope of Work 5. Electronic Program Support	Is online training acceptable? Is e-mailed reporting on customer service and technical issues acceptable in lieu of an online platform? Is e-mailed manuals acceptable?	Training materials are acceptable in soft copy but access to a portal or reporting tool is also needed for daily business and issues.
11	6	Appendix W Scope of Work 5. Electronic Program Support c.	Is a customer based System Security Administration module acceptable in lieu of a contractor based program?	No, a customer based System Security Administration module is not acceptable in lieu of a contractor based program.
12	6	Appendix W Scope of Work 5. Electronic Program Support g.	Can OTDA provide the system compatibility requirements?	File Specifications will be shared with the successful bidder.
13	7	Appendix W Scope of Work F. Banking Services Manual	Are e-mailed Banking Services Manuals acceptable?	Yes, e-mailed Banking Services Manuals are acceptable.
14	12	Appendix W Scope of Work N. Outbound Prearranged Payment and Deposit Entries (PPD) 3. Testing	Can OTDA clarify? Is OTDA looking to test each file before each origination on a post transition basis?	Yes, OTDA is looking to test each file before each origination on a post transition basis.
15	12	Appendix W Scope of Work N. Outbound Prearranged Payment and Deposit Entries (PPD) 4. Record Retention	Can OTDA clarify? Is OTDA expecting Contractor to provide a Customer Support for SCU's or is the individual account holders? (i.e. parents)	The counties/SDU are the account holders.
16	15	Appendix W Scope of Work Q. Inbound Electronic Funds Transfers 4.	Can OTDA clarify? Is OTDA expecting that Contractor validate addenda record information? If so, how is this done today?	It is OTDA's expectation that the Addenda information be validated. The method is the responsibility of the vendor.
17	17	6.0 Bid Proposal Submission	Specifics were not provided so will the State accept electronic signatures on the forms that need to be completed? Do they have to be "wet" signatures?	Original ("wet") signatures are required in the hard copy proposal.
18	198	Scope of Work - Appendix W	Please confirm if the State is considering/evaluating, as part of this invitation to bid, a State sponsored debit card as a disbursement mechanism for payments to custodial parents?	This IFB is for Banking Services as described in the solicitation, and will be awarded, as per Section 8.0 (page 19), on the basis of lowest price to the responsible and responsive offeror.
19	6	Sec 3.1 Minimum Mandatory Requirements	Requestor has bond ratings from Moody's, S&P, and Fitch but not Kroll. Does the State require that a Kroll rating be in place to bid or can the State allow a bidder to obtain a Kroll bond Rating as part of award designation i.e award being subject to obtaining the Kroll Bond Rating? The cost to obtain such a rating so that the Kroll Rating was in hand to just propose is over \$100,000.	Commercial banks are required by the FFIEC to file a quarterly CALL report, and the Kroll rating is derived from that. New York State will obtain a Kroll rating at no expense to the bidders. So the bidders do not need to "pay" for a Kroll rating or enroll in anything. The State/OTDA will not amend the qualification to include other ratings services/standards.
20	6	Sec 3.1 Minimum Mandatory Requirements	Please confirm that a AAA rated Letter of Credit from the Fed Home Loan Bank would be acceptable collateral.	A letter of credit (LOC) from a Federal Home Loan Bank (FHLB) is an acceptable form of collateral, provided that it is irrevocable, unconditional, and nontransferable. Any such LOC must only permit drafts/presentation by the State of New York/OTDA/OSC (the specific terms can be finalized upon final award of any contract in connection with the IFB).
21	1	Appendix W	Section C references weekly project reporting. Are the weekly reports related to the initial implementation or ongoing through the life of the contract? If the weekly report is ongoing how is it delivered weekly and is there a format that OTDA can share?	The reports in question pertain to the Operations phase and are to be ongoing through the life of the contract. Means of delivery has been email, but both the format and means of delivery can be mutually agreed upon by OTDA and the successful bidder during contract negotiations.

22	1	Appendix W	Are written responses required for Appendix W Statement of Work?	Please see IFB Section 5.1 Bid Proposal for a list of items required in a Bidder's response. Items must be submitted as described in IFB Section 6.0 Bid Proposal Submission. No additional information is required.
23			Are you able to provide a listing of the 58 local district names and locations?	This information will be supplied to the successful bidder.
24	4	Appendix W	Is the state date check report delivered through an online banking portal or as data file?	The state date check report is delivered through an online banking portal.
25	6	Appendix W	How is the Contractor's System Trouble Log delivered to OTDA? Can you provide a sample as to what is included in the Contractor's System Trouble Log?	The requirements of the log are fully described in Appendix W, Section G, subsection 4. No samples will be provided. The mode of transmission is at the discretion of the vendor.
26	7	Appendix W	Under bank check stock there is a reference to Z-fold format checks. Does OTDA have a vendor that you currently use to get the Z-fold format checks? If yes, who is that vendor?	OTDA does not currently contract directly with a contractor for Z-fold format checks. OTDA may be able to share with the awarded Contractor the current subcontractor for Z-fold format checks as part of the transition process.
27	7	Appendix W	There is a request for foreign deposit slips and bags. Other than USD, please provide a list of what other foreign currency that OTDA may receive?	OTDA has received payments in CAD, GBP and EUR. OTDA has also received foreign checks made payable in USD. However, any foreign currency received must be accepted, whether or not included in this list.
28	7	Appendix W	There is a request for a banking services manual. We provide User Guides for each of the services included in the IFB. If the User Guides provide all of the necessary information is it acceptable to provide User Guides instead of a banking services manual?	Yes, if the User Guides provide all of the necessary information it is acceptable to provide User Guides instead of a banking services manual.
29	7	Appendix W	What types of foreign Currency or Checks will be deposited? What countries?	Hard currency, whether domestic or foreign, will be physically deposited. Checks drawn in foreign funds will also be physically deposited. While some countries are more regularly represented, any and all must be accepted.
30	8	Appendix W	Under section G. Customer Service there is a list of protection standards. Can you please explain how this relates to the customer service section?	All information pertaining to OTDA's finances in this contract, including Customer Service interactions with account holders, must be held to the highest standards of security and confidentiality. The stated standards describe OTDA's baseline requirements to ensure this.
31	8	Appendix W	Under section G. Customer Service there is a request for a Customer Service Log. The bank won't be receiving calls from account holders for the services in this IFB. Can you please explain what OTDA is looking for and provide samples?	The bank will be receiving calls from account holders, please see Appendix W, Section G. The requirements of the log are fully described in subsection 3 of this same section. No samples will be provided.
32	8	Appendix W	Under section G. Customer Service there is a request for a Systems Log. The bank won't be receiving calls from account holders for the services in this IFB. Can you please explain what OTDA is looking for and provide samples?	The bank will be receiving calls from account holders, please see Appendix W, Section G. The requirements of the log are fully described in subsection 4 of this same section. No samples will be provided.
33	8	Appendix W	Can you provide a sample of your current Customer Service and System log?	The requirements of these logs are fully described in subsections 3 and 4 of Appendix W, Section G. No samples will be provided.
34	9	Appendix W	There is a reference to foreign currency conversion. Other than USD, please provide a list of what other foreign currency that OTDA may receive. How does OTDA receive these payments (wire, check)? How often does OTDA receive foreign currency payments?	OTDA has received foreign checks payable in CAD, GBP and EUR. OTDA has also received foreign checks made payable in USD. However, any foreign currency received must be accepted, whether or not included in this list. From January 2023 to July 2023, OTDA has received foreign currency payments an average of 16 times per month.
35	9	Appendix W	How often is cash deposited? Is this currently being deposited at branches or vaults?	Cash is deposited several times a week. Current practice is deposit at a branch.
36	170	Nacha ICL Format	What version of the image cash letter are you currently using? Are you able to send in an X9.100 version of the ICL file?	OTDA utilizes the DSTU X9.37-2003 standard at present. Please see Appendix S, pages 170-179.
37			Can you provide additional detail on the breakdown of the Image Cash Letter Deposits?	OTDA utilizes the DSTU X9.37-2003 standard at present. Please see Appendix S, pages 170-179.
38	12	Appendix W	There is reference to record retention for 180 days for all ACH transactions with written documentation for requests from account holders. Please provide examples of what would be requested by account holders?	The described requests may comprise any ACH information pertaining to any of our accounts.
39	14	Appendix W	There is reference to record retention for 180 days for all ACH transactions with written documentation for requests from SDUs or the OTDA. Please provide examples of what would be requested by the SDUs or the OTDA?	Please see reply to Question #38.
40	14	Appendix W	Under section Q. Inbound Electronic Funds Transfers there is reference to IAT. How many IAT transactions does OTDA receive monthly and what is the average amount?	OTDA has been informed of the impending end of IAT and is pursuing a solution outside of the banking relationship.
41	16	Appendix W	Under section V. Facilities there is reference to foreign check deposits. Please provide a list of what foreign currency that OTDA may receive.	OTDA has received foreign checks payable in CAD, GBP and EUR. OTDA has also received foreign checks made payable in USD. However, any foreign currency received must be accepted, whether or not included in this list.
42	9	Appendix W	Can you define further what type of Image Based Electronic Deposit your are referring to?	OTDA utilizes the DSTU X9.37-2003 standard at present. Please see Appendix S, pages 170-179.
43	9	Appendix W	Are you looking to have Remote deposit capture in the 59 support accounts and the Admin account?	That is not in scope for this procurement.
44		Appendix P	Can you confirm if the volume contained in Appendix P are monthly or annual?	Appendix P volumes are based on the 5 year contract.
45		Appendix P	Image Cash Letter has multiple windows for clearing during the day. The cost varies depending on the time of the day. In order to get the lowest cost would OTDA consider unbundling Image Cash Letter? If so, would you allow for the following price points: Early Presentment, Late Presentment, On-Us Standard, Off-Us Standard, Non-Conforming Image.	No, OTDA will not consider unbundling Image Cash Letter.
46		Appendix P	In order to provide the lowest cost for check deposits would OTDA consider a separate line item for foreign currency deposits?	No, OTDA will not consider a separate line item for foreign currency deposits.
47		Appendix P	There is no line item for the FDIC assessment. Would OTDA consider adding a line item for FDIC assessment?	No, OTDA will not add a line item for FDIC assessment.
48		Appendix P	Appendix P has a price point for Image cash letter, however there is no reference to it in the scope of work.	Please see II.1.3 on page 9 of Appendix W (page 206 of document). For specific requirements regarding ICL, please see the response to Question #36.
49		Appendix P	There is a line item for Image Cash letter in the Appendix P but no reference to Image Cash Letter in the Statement of Work. Is Image Cash Letter a required services? If so, can you please provide requirements related to Image Cash Letter?	Please see II.1.3 on page 9 of Appendix W (page 206 of document). For specific requirements regarding ICL, please see the response to Question #36.
50		Appendix P	If an Image Cash Letter is required, is the Image Cash Letter processed by OTDA or a separate contractor?	The Image Cash Letter is processed by a separate contractor.
51		Appendix P Financial Proposal	Would you be willing to add an additional line item to the Financial Proposal to cover Maintenance fees such as Account Maintenance, Online Portal Maintenance?	No, OTDA will not add an additional line item to cover Maintenance fees.
52		Billing Statement	You provided a sample of the account analysis statement for one account. Would you be willing to provide a more recent analysis statement at the summary level of all accounts that reflects all services covered in the IFB?	Please see response to Question #4.
53		Bank Statement	What is the monthly collected average balance in all 60 accounts over a 12 month period?	Please see response to Question #6.
54		Bank Statement	Would you be able to provide a more recent bank statement?	Please see response to Question #4.

55	5	2.2 Important Information	Please clarify where the source for the materiality question derives from? Typically, materiality is determined by whether a change materially impacts the State, not other bidders.	The source of the understanding of materiality is found in case law. See for example, <i>Cataract Disposal, Inc. v. Town Bd. of Town of Newfane</i> , 53 N.Y.2d 266, 272 (1981) which provides that "A minor variation from the terms of an advertisement for bids should be considered material only when it would impair the interests of the contracting public authority or place some of the bidders at a competitive disadvantage (Le Cesse Bros. Contr. v Town Bd. of Williamson, 62 AD2d 28, affd 46 NY2d 960)." Additionally, the NYS Procurement Guidelines, §V.L provides: "In cases where the RFP [IFB] has specifically provided for negotiation of terms and conditions, the agency may engage in negotiation with the successful bidder prior to settling on the contract terms. Revisions must not substantially alter the requirements or specifications set out in the RFP [IFB]. To assess whether a potential revision constitutes a substantial change, the question should be asked: "Would other bidders or non-bidders have responded differently if the term or condition to be revised as a result of negotiation had been included in the RFP [IFB]?" If the answer is "yes" or "possibly," then the provision may not be revised." See <a href="https://ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf">https://ogs.ny.gov/system/files/documents/2018/08/psnys-procurement-guidelines.pdf</a>
56	5	2.2 Important Information - Appendix B-1	Please confirm the only expected information received from the State in connection with the services consists of ACH information (Account name, number, amount, routing and date) and check information (Name, number, amount, date). Please further confirm that provisions applicable to data not contemplated as part of the services can be removed from B-1.	Confirmed that the routine bank file sent to the Contractor by OTDA should be expected to mostly consist of ACH information (Account name, number, amount, routing and date) and check information (Name, number, amount, date). The contractor should also expect to have routine contacts with the OTDA child support program, the local services districts and the OTDA child support processing contractor for administrative purposes (password resets, online access...).  OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A). See revised Appendix B-1.
57		Appendix B - General	Will OTDA consider removing provisions that do not apply to the services requested? As a general contract and risk management practice, the Bank does not agree to non-applicable provisions, as our risk management practices requires us to fully understand the services contemplated and the risks involved. This is typically done during contract negotiations. To the extent a provision is required, the contract process requires us to document the legal obligation that creates the requirement. Many of the provisions noted herein are specific to contracts for goods, not financial services.	OTDA is omitting and/or editing several provisions in Appendix B through this Q&A. Provisions that don't apply to these banking services are deemed inapplicable. Additional non-material provisions may be edited/omitted during contract negotiations.
58		Appendix B - Article 5	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
59		Appendix B - Article 9	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Article 9 remains in the Contract to the extent applicable.
60		Appendix B - Article 12	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
61		Appendix B - Article 21	Will OTDA consider the insertion of "unless otherwise agreed" in this provision consistent with other State contracts in place? Certain "amendments" specific to the Bank Terms can be effective upon notice, and do not require Bank signature. We are amenable to negotiating those provisions specific to the Account and Service terms as we have with other State agency clients.	OTDA will not insert "unless otherwise agreed" in this provision. OTDA hereby does conceptually agree that the bank may make operational changes to their Bank Terms without OTDA consent, but no material changes can be made without a separate written amendment to the Contract that is executed by both parties. The exact language can be agreed to during contract negotiations.
62		Appendix B - Article 24	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
63		Appendix B - Article 25	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
64		Appendix B - Article 26	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
65		Appendix B - Article 27	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
66		Appendix B - Article 28	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
67		Appendix B - Article 29	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
68		Appendix B - Article 30	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	Agreed, this is not applicable to this Contract. That section is hereby deleted and replaced with RESERVED.
69		Appendix B - Article 31	We do not allow third parties to background check our employees, who are screened at the times of employment, as we can detail in our submission. We are amenable to performing a recheck upon reasonable request, and can provide a signed document that the requested recheck(s) have been completed. Please confirm this provision can be modified accordingly.	The part of this section pertaining to background check is hereby deleted. Please also see answer to questions #107 and #175.
70		Appendix B - Article 33	We note that "supplier" is not a defined term and would request removal or limiting definition as a supplier specific to the contract as the Bank is unable to allow OTDA to dictate Bank's suppliers generally. Please confirm this is acceptable.	The part of this section pertaining to suppliers is hereby deleted. Note such omission does not apply to the MWBE/SDVOB requirements.
71		Appendix B - Article 40	Bank is unable to assign such claims to the State and has not historically done so in other State contracts, is OTDA able to remove this provision?	This section is hereby deleted and replaced with RESERVED without prejudice to the State's available remedies at law.
72		Appendix B - Article 41	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	This section is hereby deleted and replaced with RESERVED.
73		Appendix B - Article 43	Will OTDA consider revisions to this provision to (1) reflect any such rules must be provided in writing and agreed to by Bank and (2) be limited to scenarios where Bank employees are accessing the State's physical or virtual infrastructure? Bank is unable to agree to unspecified policies in advance, and, if required, such obligations typically apply only to employees engaging with client infrastructure.	This Article 43 of Appendix B is hereby deleted and replaced with RESERVED. Security requirements are covered in the Revised Appendix B-1 (posted with the Q&A).
74		Appendix B - Article 45	Please confirm this is not applicable to the services contemplated and can be removed from the final contract. Applicable warranties for the services provided are addressed in the Bank terms.	OTDA hereby omits: §45 (a), (c), (d), (e). §45 (b) and (f) through (m) remain but are subject to contract negotiation.
75		Appendix B - Article 54	Will OTDA consider the insertion of "unless otherwise agreed" prior to contractor accepting sole responsibility consistent with other State contracts in place? The nature of the services often require clients to provide timely information/direction and the account and service terms specify those obligations out of the Bank's control for which the Bank cannot agree to be solely responsible.	This provision is subject to contract negotiation. OTDA will cooperate in providing necessary and relevant information to the Contractor.
76		Appendix B - Article 55	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
77		Appendix B - Article 56	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
78		Appendix B - Article 57	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
79		Appendix B - Article 58	Please confirm this is not applicable to the services contemplated and can be removed from the final contract.	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
80		Appendix B - Article 60	Please confirm this is not applicable to the services contemplated given the banking services are not paid for with federal grant funds and can be removed from the final contract.	This provision remains as it is part of the provisions required by the Federal government to be included in federally funded contracts. See answers to questions #132 and 189.

81		Appendix B-1 - General	Bank cannot generally contractually agree to client information security provisions as the way our programs operate internally simply cannot account for client-specific requirements. We also do not review such proposed provisions absent an award, as our information security experts are dedicated to information security, not sales efforts. Accordingly, for purposes of this IFB, Bank asks if OTDA would consider accepting similar contractual provisions to other State Agencies, without expressly identifying each potentially problematic provision during the Q&A process. If OTDA confirms it is generally willing to consider changes generally consistent with other NYS agencies, than no bidder can be prejudiced by not knowing the specific changes as all can and should submit a bid. We do here ask a few specific questions around requirements we have negotiated historically in State level contracts, but this is non-exhaustive and we have not noted duplicative terms (already questioned in other areas)	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
82		Appendix B-1 - 3(Nov 2), Purpose of Data	Data use provisions are addressed in the Bank's account and service terms, which we are amenable to negotiating upon removal of this provision.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
83		Appendix B-1 - 8. Data Location	Please confirm this is not a legal requirement applicable to OTDA but reflects a policy preference? If a legal requirement, please provide the relevant citation.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
84		Appendix B-1 - 8. Data Location	Bank does follow a follow the sun approach as part of providing global financial services, please confirm whether OTDA is amenable to negotiating sufficient protection for OTDA data regardless of location and removing this requirement consistent with other State contracts.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
85		Appendix B-1 - 9. Contract and Data Center Audit	Please confirm this is not a legal requirement applicable to OTDA but reflects a policy preference? If a legal requirement, please provide the relevant citation. Bank is unable to allow clients to audit bank data centers from a regulatory perspective.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
86		Appendix B-1 - 20(Nov 14), Information Security Incident and Information Security Breach	Will OTDA consider revisions to this provision consistent with other State contracts?	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
87		Appendix T - Article 1	Please confirm that any re-negotiation subject to Article 1 requires mutual agreement, and absent mutual agreement, we can terminate for convenience.	In the event of a legislative and/or regulatory change, OTDA, when applicable through its contractors, must comply with such change while still providing the services. This provision is subject to contract negotiation. Termination for convenience by the Contractor is not available in NYS contracts. See, NYS Office of the State Comptroller's Guide to Financial Operations: <a href="https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi2i-unilateral-termination-provisions">https://www.osc.state.ny.us/state-agencies/gfo/chapter-xi/xi2i-unilateral-termination-provisions</a> See also answers to questions #61, 110, 111, 176, 177 and 178.
88		Appendix T - Article 2	Please confirm that 5. can be revised to simply reference the attached Banking Schedules as an Exhibit, and the final negotiated bank terms can be attached. We are unable to accept the ambiguity created by the proposed language when there is no need for it.	OTDA disagrees that the second sentence is unnecessary in that those documents as placed in the order of precedence cannot materially contradict the documents above it. OTDA may, in its discretion, consider non-material changes to the language of this second sentence during contract negotiations, however, any such changes must recognize that there will be no incorporation of or acceptance of the Contractor's Banking Services Schedules unless such are expressly agreed to by OTDA.
89		Appendix T - Article 6	Will OTDA consider the insertion of "unless otherwise agreed" within this provision consistent with other State contracts in place. The nature of the services require ongoing communication, much of which is addressed in the specific account and service terms, and most of which is electronic in nature. We do not want to create an unintended conflict.	OTDA recognizes that certain communications regarding the day-to-day operations of the bank are conducted electronically. The notice provision of the contract relates to the management of the contract, not the day-to-day operations of the banking services. OTDA will consider reasonable language that identifies the need for communications between the parties to occur through the bank portal, etc. for the ordinary business practices; however, such will not obviate the notice requirements of this Article 6.
90		Appendix T - Article 7	Will OTDA consider the insertion of "unless otherwise agreed" prior to contractor accepting sole responsibility consistent with other State contracts in place? The nature of the services often require clients to provide timely information/direction and the account and service terms specify those obligations out of the Bank's control for which the Bank cannot agree to be solely responsible.	OTDA hereby deletes and replaces the 4th paragraph of Article 7 of Appendix T with: The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities <i>under its control</i> required under this Agreement and to provide the Services and commodities as specified in accordance with the Appendices W and P.
91		Appendix T - Article 7	Will OTDA consider modifying the site visit provision to require reasonable notice and cause and be further subject to Bank's reasonable security precautions? For many reasons, the Bank is unable to grant inspection rights to clients.	Yes, the contract will be revised to reflect this.
92		Appendix T - Article 10	The Bank is able to agree to reasonable cooperation in the event of a transition, but cannot agree to this provision as drafted. Will OTDA consider such reasonable revisions.	OTDA agrees to negotiate this provision. Also, see answers to questions #150, 155, 214, 215.
93		Appendix T - Article 13	The services requested are not readily susceptible to extension to other clients. Bank is amenable to serving other agencies and commits to it's best pricing for each based on Agency-specific factors, but is not proposing this to be a cooperative agreement. Will OTDA consider removing or narrowing this provision to reflect it is intended to obtain the best pricing for OTDA specifically and is not a cooperative contract?	OTDA agrees to negotiate this provision. Also, see answer to question #157.
94		NDA	Will OTDA consider revisions to the NDA consistent with changes acceptable to other State agencies? As a general matter, we can only agree to NDA requirements for employees assigned to work on this relationship.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
95	202	5. Electronic Program Support	Can OTDA please clarify what activity is required by the customer services /technical issue reporting? Is this all banking services or just in regards to the debit card program?	There is no debit card component to this contract. For other requirements, see Appendix W.
96	213	V. Facilities	Is a depository office mandatory in each local district SCU?	No, a depository office is not mandatory in each local district SCU.
97	No Page Number exists	IFB, 3.1 Minimum Mandatory Requirements, Paragraph F	F. Sections 105 and 106 of the New York State Finance Law require financial institutions holding deposits of New York State monies to pledge collateral with OSC to the extent deemed appropriate by OSC. As required by such law, the Bidder must agree to pledge securities or to obtain a surety bond by companies with the highest ratings issued by nationally recognized statistical rating organizations to secure the State's interest in any depository account and any "pass-through" accounts to the extent deemed appropriate by OSC. OSC shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the New York State fiscal agent. OSC reserves the right to periodically verify the amount of collateral held. QUESTION: For your consideration we recommend that the 58 accounts opened under each district's tax ID have their collateral maintained at the Bank's 3rd party custodian. Is this acceptable? And if OTDA feels strongly about the 2 accounts with the NYS Tax ID, the collateral for those can be maintained at NYS's custodian. Is this acceptable?	The Contractor shall pledge collateral for all 60 accounts. The NYS Office of the State Comptroller, as the New York State fiscal agent, will manage the collateral for the two accounts with the NYS Tax ID pursuant to Sections 105 and 106 of the New York State Finance Law. The collateral for the 58 accounts with non-NYS FEINs may be maintained at the Bank's 3rd party custodian, upon OTDA review and approval.  The IFB § 3.1 Minimum Mandatory Requirements, Paragraph F is hereby deleted and replaced with: F. Sections 105 and 106 of the New York State Finance Law require financial institutions holding deposits of New York State monies to pledge collateral with OSC to the extent deemed appropriate by OSC. As required by such law, the Bidder must agree to pledge securities or to obtain a surety bond by companies with the highest ratings issued by nationally recognized statistical rating organizations to secure the State's interest in any depository account and any "pass-through" accounts to the extent deemed appropriate by OSC. OSC shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the New York State fiscal agent, OSC, for the two accounts with the NYS Tax ID. OSC reserves the right to periodically verify the amount of collateral held.  <b>Appendix C is hereby deleted and replaced with Revised Appendix C.</b>
98	No Page Number exists	IFB, 4.3 Questions	There will be two opportunities for submission of written questions and requests for clarification with regard to this IFB. The second round of questions shall be limited to follow-up questions regarding an answer provided by OTDA in round one. OTDA will not respond to any new questions in round 2. There is a significant amount of dense material to review prior to the first round of questions. It would be helpful to all bidders to open up the second round of questions to any new topics not previously brought forward in round 1 questions. Bidders will of course do their best to capture all material issues in round 1, but if something is missed it would be helpful to have a second chance. Is this acceptable?	No, the second round will only be for Q&A Round 1 follow-up. Bidders may submit follow-up questions to OTDA answers. Note, non-material contract provisions are all subject to contract negotiations after contract award.

99	No Page Number exists	IFB, 4.5 MWBE and EEO Participation Requirements & 4.6 SDVOB, para+D14ph I.	Business Participation Opportunities for MWBEs For purposes of this solicitation, OTDA hereby establishes an overall goal of 30% for MWBE participation, 15% for New York State-certified Minority-owned Business Enterprise ("MBE") participation and 15% for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. AND I. Offerors will complete, Appendix Y, (Form OTDA-4200), Service-Disabled Veteran Owned Businesses (SDVOBs) Utilization Plan, to demonstrate their proposed utilization of NYS certified SDVOBs as part of their bid/proposal. OTDA has set a goal for SDVOB utilization for this procurement at 6%. The services in scope include the processing of receipts and disbursements, along with fraud protections and internet banking services.	If the offeror is unable to meet the established MWBE and SDVOB participation goals, a waiver request must be submitted. A waiver request is the only option available to adjust the goals published in the IFB. Please review Appendix Z and Appendix Y for instructions on submitting the required forms for consideration. Appendix Z, including the liquidated damages clause therein, is standard boilerplate language for all NYS agencies that may not be altered.
100	No Page Number exists	IFB, 4.8 Subcontracting & Appendix C - Offeror's Certified Statements, 3.T. and elsewhere	We can agree to work with OTDA to select any subcontractors hired exclusively to serve the OTDA Contract. We cannot agree for OTDA to have approval or consent rights for any other Subcontractors or Agents. This limitation on OTDA's approval/consent rights will apply to all references to Subcontractors and Agents throughout the RFP. Explanation: Banks use vendors to perform certain functions. These bank-wide vendors should not meet the definition of Subcontractors as they are deeply integrated into bank-wide offerings. No one client can be involved in these arrangements. Furthermore, these vendor contracts pre-date this RFP. The Bank may wish to change these bank-wide vendor agreements over the course of the OTDA contract and will not be able to consult with OTDA or any other clients on such matters. Can OTDA accept this and modify <u>all bid documents</u> to reflect this?	OTDA requires a complete list of all Contractor's subcontractors and suppliers to be provided in the SUBCONTRACTOR AND SUPPLIER IDENTIFICATION FORM in Appendix E. OTDA will only approve subcontractors and suppliers which are subject to a vendor responsibility (VR) review, and only based upon a VR examination. A subcontractor vendor responsibility review is required when the subcontractor/supplier receives in excess of \$100,000 from this Contract. The provisions regarding subcontracting approval can be modified to reflect this during contract negotiation.  Additionally see answer to question #174. Note: this does not apply to the MWBE/SDVOB requirements.
101	No Page Number exists	IFB, 4.9 State Ethics Law & Offeror's Certified Statements, Section 3, item L, & Appendix B 1, Ethics Compliance	We note that the review of former state employees is limited to those "assigned to perform services under the Agreement." We recommend this be understood to be the assigned relationship team typically composed of a Client Manager a/k/a Project Manager, Treasury Sales Officer, Treasury Sales Analyst, Implementation Advisor and Customer Service Associate (or similar titles and roles). Do you concur? This is important in connection with Offeror's Certified Statements, Section 3, item L. A broader interpretation would be challenging given the size of Bidders.	The Ethics policy was established across all State agencies to ensure compliance with Public Officers Law sections 73 and 74. As such OTDA is unable to modify that policy.
102	No Page Number exists	IFB, 5.1 Bid Proposal, A.5. re Banking Services Schedules & Appendix W, Scope of Work	5 Submit as an attachment to the Administrative Proposal any Contractor's Banking Services Schedules, the standard bank-related documents Contractor is required by law to include in a banking contract. Nothing contained in such Contractor's Banking Services Schedules will be effective to the extent that it constitutes a material variation of the terms or requirements in the IFB. The Bank is best able to accurately put forth the nuances of how its products and services work. How the Bank's products work, roles and responsibilities, and governing entity rules (e.g., Nacha for ACH), etc., as put forth in a Bank's Treasury Terms and Conditions Agreement, should be a part of the Contract and take precedent over how the RFP documents describe how the products work. FYI, this is an important request to the bidder community. Is this acceptable? In the order of precedence, the Bank's Treasury Terms and Conditions Agreement should follow only Appendix A - Standard Clauses for New York State Contracts and the Agreement. Is this acceptable?	OTDA's terms must come before the Bank's terms in the order of precedence. However, OTDA may agree during contract negotiations to add language providing that to a limited extent the Contractor's Terms governing the functional aspects of the Bank's operation of the Accounts provided by Bank under the Contract may govern, but such Bank Terms shall not control for any other purpose. However, it shall be clear that Appendix A shall always take precedence and shall govern over Bank's Terms.
103	Various Sections	Appendix B	There appear to be sections in Appendix B that do not apply to banking services contracts. We would ask that the not applicable terms be removed from Appendix B so that the resulting contract is clear and applicable.	OTDA agrees to omit non-relevant terms within Appendix B during contract negotiations. Some provisions are already being omitted through this Questions and Answers which amend the IFB.
104	10	Appendix B, 18 c, Procurement Rights	Appendix B, 18 c, Procurement Rights - OTDA reserves the right to: c. Utilize any and all ideas submitted in the proposals received. Would OTDA agree to remove the right to utilize any ideas submitted as part of the proposal? Bidders may be hesitant to showcase next generation products and ideas if they can be utilized without consent.	This is an IFB which does not require the submission of a Technical proposal/solution, only Administrative and Financial proposals are required of bidders.
105	11	Appendix B, 21. Modifications of Contracts & 22. Scope Changes - second and third paragraphs.	Other than where such terms are more advantageous than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding unless authorized by OTDA or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding OTDA's subsequent acceptance of Product, or that OTDA has subsequently processed such document for approval or payment.  Question: We recommend replacing this section with: If the Bank modifies a service it will endeavor to communicate such change as soon as practicable and in accordance with its ordinary processes. Is this acceptable?  Prior to the Contractor implementing any change in the Services, it shall obtain the consent and approval of OTDA. The Contractor shall, prior to implementation of any such change, give written notice to OTDA of the service affected, a description of the change, why it is needed, a suggested implementation approach (and testing if necessary), the cost to OTDA if any, and any other information requested by OTDA. The approval, prior to implementation, of any requested change is in the sole discretion of OTDA.  Question: We recommend replacing this section with: If the Bank modifies a service it will endeavor to communicate such change as soon as practicable and in accordance with its ordinary processes. Is this acceptable?	See answer to question #61.
106	11	Appendix B, 21. Modifications of Contracts & 22. Scope Changes - second and third paragraphs.	In the event that OTDA proposes a change in technology or Services, it shall, prior to implementation of any such change, give written notice to the Contractor with a description of the change, why it is needed, a suggested implementation approach (and testing if necessary), and the Contractor shall have a reasonable time to analyze the cost, if any, to the Contractor. The final determination for implementation of any requested change pursuant to this section is in the sole discretion of OTDA. OTDA reserves the right to direct operating changes to the Contractor based on its own observations or based on suggestions made by the Contractor. Question: Bank's cannot agree to unknown future changes imposed by clients, as such changes could be problematic in terms of our ability to provide Services under the Agreement in a safe and sound manner and consistent with regulatory guidance and expectations. We are happy to indicate we would endeavor to support changes to future needs but both parties must agree to any contract changes. Is this acceptable?  OTDA reserves the right to direct operating changes to the Contractor based on its own observations or based on suggestions made by the Contractor. Question: The Bank is receptive to concerns and suggestions made by OTDA, but the Bank, as a regulated entity subject to a variety of laws and regulations, cannot agree to make operating changes at the direction of OTDA. Further, the services being utilized are standard and used generally by countless other clients. Would OTDA agree to remove this provision?	OTDA agrees to consider non-material modifications to this provision during contract negotiations. Also, see answer to question #61.
107	pp 12-13	Appendix B, 31. Employees, Subs and Agents	31.EMPLOYEES, SUBCONTRACTORS AND AGENTS The Contractor will conduct background checks on all employees working on this Agreement, and shall retain only individuals with the moral fitness necessary to perform Services hereunder. If the Contractor is unable to determine an employee's fitness due to the results of a background check, <b>then it shall forward a description of the results to the OTDA, for review and determination. OTDA reserve the right to conduct a security background check or otherwise approve any employee</b> , Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with OTDA's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract. OTDA reserves the right to reject and/or bar from any OTDA facility for cause any employee, Subcontractor, or agent of the Contractor. The Contractor certifies that all staff provided to perform Services possesses the necessary integrity and professional capacity to meet OTDA's reasonable expectations. Subsequent to the commencement of Services, whenever the Contractor becomes aware, or reasonably should have become aware, that any staff member(s) providing Services no longer possess the necessary integrity or professional capacity, the Contractor shall immediately discontinue the use of such staff and notify OTDA. <b>OTDA has final approval of any staff furnished to provide Services and may refuse to approve any staff member(s) based on its review of the staff member's integrity to perform the required Services.</b> The Bank complies with financial sector laws and regulations regarding employee background checks. Respectfully, we are not able to agree to forward background checks to OTDA nor allow OTDA to perform background checks on Bank employees or approve Bank personnel. We would be pleased to share our background check protocols in our Proposal. Further, the Bank can certify that staff aligned with the Contract possess the necessary integrity and professional capacity. Is this acceptable?	See answers to questions #69 and 175.

108	13	Appendix B, 32. Assignment	The Bank must be able to assess its ability to provide or not provide services to each customer and cannot be in a position where the Contract has been assigned without its consent and the opportunity to evaluate its ability to provide the services needed by a particular customer. Would OTDA accept a provision requiring the Bank's consent to any assignment of the Contract, not to be unreasonably withheld by the Bank? As a large complex organization, business lines may be moved from one legal entity to another within the organization. Would OTDA agree to permit assignment from Contractor to an affiliate?	OTDA, as a State agency, needs to be able to assign this contract without the consent of the Contractor to any entity which pursuant to a governmental reorganization would assume OTDA's responsibilities for the Contract. The provision can be modified during contract negotiation.  Regarding, the assignment from Contractor to an affiliate see NYS Appendix A's article 2 for clarification on when OTDA consent is not needed.
109	14	Appendix B, 33. Subcontractors	OTDA reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OTDA Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; OTDA's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services. OTDA reserves the right to approve contracts between the Contractor and Subcontractors. Here again, Bank must control its own vendors. If the Bank hires a subcontractor specifically for OTDA then in that case we agree that OTDA can weight in on that decision. Our position on subcontractors applies to all sections of the bid documents. Is this acceptable?	See answers to questions #100 and 174.
110	14	Appendix B, 34. Suspension of Work	At the time that OTDA issues a notice suspending all activities under the Contract, there may be payments that the Bank is processing. The Bank is subject to external requirements for processing and settling payment transactions and may not be able to comply with such a suspension notice without acting in a manner inconsistent with such requirements. Would OTDA agree to work in good faith with the Bank at the time that OTDA determines a suspension is necessary to permit the Bank to continue to comply with such external requirements?	Yes, OTDA agrees to this approach. Also, see answers to questions #87, 111, 176, 177 and 178.
111	pp 14-15	Appendix B, 35. Termination	We agree to OTDA's termination rights but require similar protections which align with what bank regulatory guidelines expect. Without the right to terminate we would be unable to bid. We would seek termination for convenience with some reasonable notice period that would allow OTDA to seek services elsewhere. We would also seek the ability, in our discretion, to immediately suspend or modify services where we see unusual activity that could be unauthorized, fraudulent, illegal or of a similar nature, cause the Bank to violate any applicable law, rule, regulation, order or similar legally binding action, or lead to a financial loss for the Bank. The Bank's rights shall not be subject to the Agreement's Dispute Resolution Provisions. Is OTDA open to negotiating termination and suspension clauses?	OTDA is hereby adding a second paragraph to Appendix B §34 as follows: "The Contractor may suspend a portion of the Service harmfully impacted by fraudulent or illegal activity (the Impacted Service), upon the delivery or transmission of a written notice to OTDA which describes the Impacted Service and steps taken or immediately to be taken by the Contractor to resolve and reinstate such Service. In addition, such notification shall set forth the Contractor's diligent efforts taken or to be taken to avoid the suspension of the non-Impacted Service during such resolution period. If the Impacted Service is not resolved and reinstated within five (5) business days after such suspension, then the matter shall immediately be subject to the Dispute Resolution Process set forth in Sections 50 and 51 of Appendix B. The Contractor acknowledges that due to the critical nature of the Services to OTDA and the State's operations, the Contractor may not terminate or suspend the provisioning of any other non-impacted Services under the Agreement at any time during the Contract term."  Also, see answers to questions #87, 110, 176, 177 and 178.
112	pp 15-16	Appendix B, 36. Force Majeure	Would OTDA add pandemic, technology breaches, market risk, changes in law, unanticipated spikes in supply and demand to the list of Force Majeure events? Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 calendar days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract. We agree with the general premise that we would work together in partnership during a force majeure event, however, the Bank would generally have to make its own business decisions during a pandemic. Not being sure of the intent of the underlined section we thought we should raise the question. Can this be edited to make that clear? In addition, OTDA reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. Any change to the contract must be agreed to by both parties. We cannot agree in advance to allow OTDA to make unilateral contract changes in the future. Can this section be changed?	OTDA agrees to add "pandemic" to the list of force majeure events in Appendix B, Article 36. Furthermore, Appendix B, Article 36 already includes a broad clause to cover "similar causes beyond the control of the Contractor". OTDA will not unreasonably withhold its approval of the bank's assertion of an event "beyond its control" being a force majeure event.
113	pp 16-17	Appendix B, 39. Remedies for Breach	The Bank strives to provide superior customer service to our clients. Disputes with respect to amounts owed or services rendered should be addressed in accordance with the applicable resolution procedures, as agreed upon by the parties in writing in a final contract. Without limiting OTDA's rights in Appendix A, Standard Clauses for NYS Contracts, would OTDA remove the provisions for Remedies for Breach in Appendix B, Section 39? Would OTDA also agree that, in the event of a breach or asserted breach, the parties will work cooperatively to respond to and, as appropriate and agreed to by the parties, remedy such a breach or concern with respect to either party's performance under the Agreement, and utilize the agreed upon dispute resolution processes? Among other things, would OTDA agree that the Bank should be paid in full for all services rendered and that OTDA shall be accordingly obligated to provide such payment under the Agreement, even after the occurrence of a breach of alleged breach?	The provision remains but OTDA will consider non-material changes during contract negotiations. Yes, OTDA will make payments for services properly performed and the parties may use the agreed upon dispute resolution processes as applicable. Notably, this provision provides for a cure period which may be extended. See answer to question #179.
114	17	Appendix B, 43. Security	43. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of OTDA set forth in the Contract or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols. The Bank has its own security procedures that have been developed and implemented to comply with applicable laws, rules and regulations. To ensure their integrity, the Bank cannot tailor its procedures to each client individually. Recommend that the parties agree to the security procedures specified in the Agreement, as a whole and including the Bank's Treasury Terms and Conditions Agreement, including the "Security Procedures" referred to in the Bank's Treasury Terms and Conditions Agreement, based on the Bank's well established procedures and processes. Is this acceptable?	Section is deleted per answer to question #73.
115	17	Appendix B, 44. Cooperation with Third Parties	It should be understood that in cooperating with any Contractors or Subcontractors of OTDA to ensure the delivery and performance under the Contract that the Bank shall not be obligated to disclose or reveal any confidential information of the Bank, its customers or otherwise. It should also be understood that OTDA shall be fully responsible to the Bank for all acts and omissions of its Contractors and Subcontractors, including any damages or losses the Bank or its agents may suffer because of the actions or omissions of any Contractor or Subcontractor of OTDA. Is this acceptable?	To be clear, the Contractor is not required to disclose confidential information of the Bank or its customers to an OTDA contractor. Rather, the Contractor is required to convey the information pertaining to the OTDA Child Support contract to OTDA's third party contractor(s).  OTDA cannot be liable to the Bank for its child support contractor(s). The Bank can pursue an action directly against an OTDA contractor.
116	pp17-19	Appendix B, 45 Warranties, a - e; j, l	While the Bank is able to provide the rights to use the services offered, we are not offering any products for purchase therefore we are asking that the warranties for manufactured products (a-e, j, l) and indemnification provisions, already dealt with elsewhere in the Agreement, be removed. Is this acceptable? Any terms or obligations including bank liabilities should be removed, including indemnifications by the Bank, because its not applicable given we are providing services not products. Is that acceptable?	Regarding warranties, see answer to question #74. Regarding indemnification and bank liabilities, see answers to questions #122, 123 and 124.
117	19	Appendix B, 45 Warranties, f. Qualification Warranty	The Bank is a global financial services company that has personnel in a variety of locations and may utilize service providers that perform services used by the Bank in performing its responsibility to OTDA and many other clients. The Bank's own personnel and the personnel of its subcontractors may be located within or outside of the State of New York. As a national bank, the Bank can represent that it is authorized to perform the Services under the Agreement and that, to the extent the activities are conducted in New York, it has obtained all required authorizations or approvals. The Bank can also represent that its subcontractors, if and to the extent required by applicable New York law, have obtained any required licenses to do business in the State of New York.	See answer to question #74.
118	19	Appendix B, 45 Warranties, g. Administrative Warranty	Regarding the advance notice requirement for reductions in staff, we would like to replace advance notice with notice as soon as practicable and agree that no notice is required in the event of temporary changes in personnel.	OTDA hereby deletes the following sentence of Appendix B Section 45(g):  "Contractor shall provide OTDA with advanced, written notification of all reductions in staff below the levels found in the Contractor's proposal."
119	19	Appendix B, 45 Warranties, h. Price Protection Warranties.	h. Price Protection Warranty Contractor warrants that the Agreement's prices and warranties are comparable to or better than the equivalent terms being offered by the Contractor to other State government customers using similar scope and volume of services under like terms and conditions. If, during the Term of this Agreement, the Contractor enters into an agreement with any other State government customer that offers better prices and warranties for similar services, OTDA may amend the Agreement to reflect such superior pricing or warranty terms. Each treasury services contract is unique and has custom pricing. We hold that you cannot compare the pricing for one contract to another. We have never agreed to this or similar terms. Recommend this term be struck. Is this acceptable?	See answer to question #74.

120	19	Appendix B, 45 Warranties, I. Additional Warranties	I. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to OTDA. Each agreement is unique and based on the specific needs of the client and based on the specific combination of the terms and services provided; the Bank cannot agree to make changes to specific terms in isolation and/or based on other general offers. Thus, the clause should be struck. Is this acceptable please?	See answer to question #74.
121	pp19-20	Appendix B, 46. Legal Compliance	46. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of OTDA that it substantially meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by OTDA. Failure to comply or failure to provide proof may constitute grounds for OTDA to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by OTDA. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law. The Bank will comply with all laws, rules, regulations, etc. applicable to it in the performance of its responsibilities. The Bank can provide information to OTDA to establish that it is legally authorized to perform its responsibilities under the Agreement; but the Bank cannot disclose confidential information, including but not limited, any confidential supervisory information, to OTDA. Is this limitation on the information the Bank can provide acceptable? The Bank also cannot engage in any activities that would cause it to violate any applicable laws, rules, regulations or orders applicable to it, which may change from time to time. The Bank would seek to have OTDA agree that in the event and to the extent of a conflict between State and federal law, federal law will apply. The Bank can provide notification to OTDA if there are changes in laws that would materially impair the Bank's ability to perform under the Agreement. Would it be acceptable to OTDA to include a provision indicating this in the Agreement?	Yes, OTDA agrees with the clarifications made in the question. The provision can be modified during contract negotiation.
122	pp20-21	Appendix B, 47 Indemnification	1. Would OTDA agree that the Bank's obligations shall be limited to liability for damages suffered by OTDA arising directly from the willful misconduct or negligent act of the Bank, its employees, subcontractors, or agents in performing under the Agreement? 2. Would OTDA also be willing to agree that the Bank shall not be liable for claims, losses or damages arising under the Agreement caused by the negligence or willful misconduct of OTDA's employees, agents or subcontractors? 3. Would OTDA be willing to agree that, to the extent the agreement covers claims for death, personal injury or damage to real or personal property and there is a dispute regarding the defense of such claim by the Bank and the Attorney General shall try to reach an amicable settlement but that the Attorney General shall not have the final determination in such matters? 4. Rather, would OTDA be willing to agree that any such dispute will be subject to the ordinary dispute resolution procedures of the Agreement? 5. Given no services will be provided onsite, would OTDA be willing to agree that the Bank shall not be liable to OTDA for claims for death, personal injury or damage to real or personal property.	1. OTDA agrees that the Bank's obligations shall be limited to liability for damages suffered by OTDA arising directly from the willful misconduct, gross negligence, negligence, fraud, or failure to comply with applicable laws pertaining to the Bank, its employees, subcontractors, or agents in performing under the Agreement. 2. OTDA agrees. 3. No, we believe the Attorney General would not allow this. 4. No, we believe the Attorney General would not allow this. 5. No, unless the Attorney General agrees during contract negotiations.
123	pp20-21	Appendix B, 48 Indemnification Relating to Infringement	The Bank's Treasury Terms and Conditions Agreement contains language regarding Infringements. Would OTDA consider replacing this provision with the T&C Infringement language which will be provided in our Proposal?	OTDA will consider non-material changes to address infringement liability during contract negotiations.
124	21	Appendix B, 49 Limitation of Liability	1. The cap of the total "not to exceed" value of the Contract is too large. We propose a total cap on the Bank's liability to OTDA for any and all breaches of representations, covenants, warranties, obligations and indemnifications under the Agreement limited to the greater of \$X (TBD) million or 2x actual annual banking service charges. Such a cap will be more broadly acceptable to the bidder community and there is strong precedent for using this formula with other large NYS Governmental entities. Is that acceptable? 2. The Bank would also seek for OTDA to agree that, subject to applicable law and regulations, the Contractor shall not be liable to the State, OTDA, their officers, employees, vendors, or agents or any third parties for any claims, losses, damages or harm suffered by any of them to the extent resulting from any act(s) or omission(s) of the State, OTDA, their officers, employees, vendors, or of third parties of any nature or kind. Such act(s) or omission(s) shall include any acts of fraud or misconduct of the State, OTDA, their officers, employees, vendors, or agents or any third parties but the limitation of liability of the Contractor shall not apply to the extent that the claims, losses, damages or harm suffered directly from the acts or omissions of the Contractor, its agents, or vendors. 3. The Bank would also seek for OTDA to agree, subject to applicable law and regulations, that OTDA shall assume responsibility to dispute, settle, pay or address any and all claims arising from alleged fraud or misconduct by OTDA, its officers, employees, vendors, or agents, or any member of the public utilizing, participating in, or who is the beneficiary of the NYS Child Support Program except that OTDA shall not have an obligation to pay any such claim to the extent the losses associated with such claims have been finally determined by a court of competent jurisdiction to have resulted from the acts or omissions of Contractor, its agents or vendors. 4. In addition, the Bank would seek for OTDA to agree that in no event shall the Contractor be liable to or obligated to indemnify OTDA for losses imposed on, incurred by or asserted against OTDA or the State to the extent such losses are caused by the Contractor's action or inaction in reliance upon any instruction by OTDA, or its officers or Contractors, except to the extent that a court of competent jurisdiction has fully and finally adjudicated that any such losses arise from or relate to the willful misconduct or negligent act or failure to act of the Contractor, its officers, employees, subcontractors, partners or agents in relation to Contractor's compliance with any such instruction by OTDA. Are such provisions acceptable to OTDA? 5. In addition, the Bank would seek for OTDA to agree that the Bank shall not be liable for any losses resulting from erroneous or duplicate payments caused by the fraud or error by a party other than the Bank or its agents or for any losses resulting from the dishonor or return by any party other than the wrongful return by the Bank or any payment to OTDA. Are such provisions acceptable to OTDA? 6. The Bank would also seek OTDA's agreement that the Bank shall not be liable for any losses resulting from the transmission of (i) any child support payments to a person or account other than the lawful recipient, or appropriate account, and (ii) incorrect amount(s), duplicate or multiple payments, or omission of payment(s), any or all of which are caused, in whole or in part, by fraud or error by a party other than the Bank, its employees, agents, subcontractors, or suppliers. 7. Subject to applicable law, rules and regulations, the Bank shall not be liable for any losses resulting from the dishonor or return by any party other than the wrongful dishonor or wrongful return by Bank of any payments made to OTDA or the NYS Child Support Program. Is this acceptable to ODTA?	1. The limitation of liability in Appendix B §49 is New York State's standard contractual limitation of liability. The not-to-exceed value of the Contract will be based on the fees bid in Appendix P multiplied by the estimated volumes for the five years, as indicated in Appendix P. The exact not-to-exceed value will be written into Appendix T prior to execution of the Contract. 2. Subject to negotiation and approval by the Attorney General and in accordance with the NYS Court of Claims Act, OTDA agrees to carve out from Contractor's liability, losses resulting from OTDA and the State negligent actions. 3. OTDA will consider during contract negotiations limited changes to the limitation of liability but any determination of liability under such circumstances would need to be subject to judicial determination. 4. Such provision is acceptable and hereby added to Appendix B, §49. 5. OTDA hereby agrees to add the following at the end of Appendix B, §49: "Contractor shall have no obligation or duty to indemnify, defend, or hold harmless OTDA or any of their officers, employees, or agents under this §49, if and only to the extent that such losses, if any, are caused by the negligence, gross negligence, willful misconduct, fraud, or bad faith of, or violation of applicable law by, OTDA, or any officer, employee, or agent thereof while acting within the course and scope of their employment". 6. OTDA will consider during contract negotiations but any determination of liability under such circumstances would need to be subject to judicial determination. 7. OTDA will consider during contract negotiations but any determination of liability under such circumstances would need to be subject to judicial determination.
125	pp 21-22	Appendix B, 50. Dispute Resolution	The Bank needs to be able to participate in a meaningful way in any dispute resolution process and retain rights to object to any findings and provide information relevant to the process. 1. Would OTDA agree to a term that provides that if the Contractor disputes the decision rendered through the informal or formal dispute resolution process or if a decision is not made within ninety (90) calendar days after the record is deemed final, if relevant, it may then pursue its normal legal remedies de novo, with OTDA agreeing that it will not assert in any subsequent litigation or proceeding that administrative remedies or procedures have not been exhausted or that any other condition precedent bars or limits the filing of an action regarding the dispute in question in the courts? 2. Can OTDA provide additional information on the timelines, roles and responsibilities of OTDA, the Bank and the Director of the Bureau of Contract Management, and any other parties, in both the formal and informal dispute processes, including any and all rights of the Bank to participate in such processes, to submit information, rebut or provide responses to any information submitted by any party participating in the process and to dispute any decisions, conclusions or determinations made during either such process? 3. In addition, the Bank needs to retain the right to seek temporary or preliminary injunctive relief at any time, whether in the Formal or Informal Dispute Process or otherwise, in a court of competent jurisdiction. Is this acceptable to ODTA?	1. No, New York State administrative remedies are not to be narrowed or eliminated. 2. Sections 50 and 51 provide the details requested but additional details may be agreed to during contract negotiations. 3. No, New York State administrative remedies are not to be narrowed or eliminated.
126	24	Appendix B, 54	OTDA plays an important role in the accomplishment of the banking services, including providing information necessary for the Bank to perform its responsibilities under the Agreement. Thus, the Bank cannot accept sole and complete responsibility. The steps and functions required of OTDA are outlined in the Bank's Treasury Terms and Conditions Agreement; both parties must perform their functions. Request this section be modified to reflect same. Is this acceptable?	See answer to question #75.
127	24	Appendix B, 55	Software licensure: We are not able to provide specific license terms for a single client. The Bank will provide access to services based on normal terms of use. Therefore we recommend this section be deleted. Is that acceptable?	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
128	26	Appendix B, 56 Product Acceptance	This section is not applicable as we are providing a service on normal terms generally available to clients. Recommend it be deleted. Is that acceptable?	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
129	26	Appendix B, 57 No Hardstop or Passive License Monitoring	The Bank will provide access to services based on normal terms of use. Therefore we recommend this section be deleted. Is that acceptable?	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s).
130	pp 26-27	Appendix B, 58. Ownership/TITLE to Project Deliverables	Ownership of Information/IP: We would like to recommend the following language in connection with this topic: The OTDA hereby acknowledges and agrees that the Contractor shall retain ownership rights to its proprietary systems and processes. The Contractor shall also retain its ownership rights to all proprietary materials (i.e., product user guides, software code etc.) and Contractor information as well as all rights and titles to products and processes it develops, improves, and/or modifies for its use. For the avoidance of doubt nothing custom will be created for OTDA as banking services offered generally to customers are being offered in this response. Is this acceptable? Would OTDA be willing to agree that it will destroy any bank materials that it has maintained in its possession following termination?	This provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s). OTDA agrees that the Contractor's Existing Materials are owned by Contractor.

131	pp27-28	Appendix B, 59 Changes to Products & Services	<p>a. Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify OTDA in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at OTDA's option, and in order to enable OTDA to continue the use and maintain the Product, provide OTDA with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that OTDA is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge. Question: We recommend replacing this section with something similar to: If the Bank terminates or modifies a service it will endeavor to communicate such change as soon as practicable and in accordance with its ordinary processes. Is this acceptable? Also, what should happen with a possible replacement solution and its pricing depends on the situation and the language should reflect that. For example the clearing house will no longer support IATs. There are substitute solutions, like wires, but they cost more. The notice timeline is shorter than 12 months. The example demonstrates that each case is unique thus building more flexibility into the language seems appropriate. Recommend the language be discussed post award to incorporate this feedback. Is that acceptable?</p>	This provision is subject to contract negotiation.
132	29	Appendix B, 60 f	<p>There will be no documentation produced as we are providing banking services utilized by customers generally. Do you agree there is no documentation subject to this provision? If not, are you able to identify the documentation? Can this section be modified or struck?</p>	Agreed this section is not applicable but remains as it is part of the provisions required by the Federal government to be included in federally funded contracts.
133		Appendix B-1 - OTDA Security and Confidentiality Terms	<p>We would like to eliminate Appendix B-1 please. The Bank is a highly-regulated financial institution that serves a large body of consumer and Business Clients throughout the world. In many cases those customers are supported from common systems and facilities. It is not practical (or even possible) for the Bank to customize its overall information security program to support the requirements of a single Business Client. However, as a highly-regulated, multinational financial services firm, the Bank has built a comprehensive Information Security Program that is designed to meet the key requirements of the numerous data security and privacy laws with which it must comply. The Bank's Information Security Program should provide your company with the protection that it needs for its data. The Bank's disaster recovery program is robust. The Bank is willing to provide more information upon award. Is this acceptable?</p> <p>The Bank is not able to agree to a disaster recovery plan required by a single business customer, as it has a robust program that applies specifically to our services. The Bank governs its Business Continuity and Disaster Recovery program through an established and documented corporate policy approved annually by the Board of Directors. Bank and its affiliates recognize the importance of protecting its employees, customers and clients through industry-leading management and practices of business continuity and disaster recovery. Those practices enable critical business functions and supporting technology, infrastructure and architecture to be defined, tested and maintained, and in the event of a business interruption, rapidly recovered. We plan to provide more information in our response, but request that this requirement be deleted in favor of the Bank's program.</p> <p>The Bank will promptly notify upon confirmation that an Information Security Incident has impacted such Business Client's information. Note also that the Bank does commit to complying with all applicable laws – including data breach notification laws (and the required response times of such laws). We noticed that general terms addressed elsewhere were included (e.g., suspension, termination, assignment, subcontracting) in appendix B-1. Please refer our other questions on these topics and note that our feedback elsewhere on these and other provisions will always apply to similar terms or provisions in the RFP documents.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
134	No Page Number exists	Appendix C - Offeror's Certified Statements, 3.L., Former State Employees	<p>See IFB, 4.9 State Ethics Law &amp; Offeror's Certified Statements, Section 3, item L. &amp; Appendix B 1, Ethics Compliance above.</p>	There is no question here.
135	No Page Number exists	Appendix C - Offeror's Certified Statements, 3.N., Professional Conduct.	<p>Subsequent to the commencement of Services, whenever the successful Offeror becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OTDA no longer possesses the necessary integrity or professional capacity, the Offeror agrees to immediately discontinue the use of such staff and notify OTDA. All employees are subject to the Bank's code of conduct. Should the Bank conclude that an employee has acted in a manner inconsistent with the code of conduct, the Bank will make a determination about the appropriate course of action. Generally, the Bank must maintain control of staffing decision. Would OTDA consider striking or modifying this language to reflect our feedback?</p>	<p>Appendix C - Offeror's Certified Statements, 3.N., Professional Conduct is hereby deleted and replaced with the following:                  The Offeror certifies that staff provided to perform Services possess the necessary integrity and professional capacity to meet OTDA's reasonable expectations. Subsequent to the commencement of Services, whenever the successful Offeror becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OTDA no longer possesses the necessary integrity or professional capacity, the Offeror agrees to immediately discontinue the use of such staff for Services under Contract and notify OTDA of such occurrence.  <b>Appendix C is hereby deleted and replaced with Revised Appendix C.</b></p>
136	No Page Number exists	Appendix C - Offeror's Certified Statements, 3.O.	<p>O. The successful Offeror agrees to undertake a background investigation of any new/replacement staff during the term of the Agreement resulting from this RFP. <input type="checkbox"/> Yes <input type="checkbox"/> No* OTDA requires Offeror to undertake a background investigation of any replacement staff. Per regulations, background investigations always occur with new hires. For employees already at the firm a new background investigation would NOT occur if an existing employee were transferred to cover OTDA. The Bank complies with all regulations regarding background investigations for its staff. Contract would need to be modified to reflect this. Is this acceptable?</p>	<p>The word "replacement" is hereby deleted.  <b>Appendix C is hereby deleted and replaced with Revised Appendix C.</b></p>
137	No Page Number exists	Appendix C - Offeror's Certified Statements, 3.S.	<p>Recommend this Certified Statement be modified as follows: The Offeror's Legal representation has reviewed and understands Appendix T (Draft Agreement), and the Offeror is willing to enter into an Agreement substantially in accord with the terms of Appendix T (Draft Agreement), as amended by these Q&amp;A and negotiated and mutually agreed to following award. Is this acceptable?</p>	<p>Appendix C - Offeror's Certified Statements, 3.S., is hereby deleted and replaced with the following:                  The Offeror's legal representation has reviewed and understands Appendix T (Draft Agreement), and the Offeror is willing to enter into an Agreement substantially in accord with the terms of Appendix T (Draft Agreement), as amended by these Q&amp;A. Conceptually, this statement is made at the time of bidding. The word "substantially" implies that Appendix T can be modified by the Parties after the statement is made within the limits of allowed contract negotiations, i.e. non-material changes.  <b>Appendix C is hereby deleted and replaced with Revised Appendix C.</b></p>
138	No Page Number exists	Appendix C - Offeror's Certified Statements, 3.U. and elsewhere	<p>U. The Offeror agrees that it shall be fully responsible for performance of work by its staff and by the subcontractor's staff. OTDA reserves the right to request removal of any Offeror staff or subcontractor's staff if, in OTDA's discretion, such staff is not performing in accordance with the Agreement. <input type="checkbox"/> Yes <input type="checkbox"/> No* QUESTION: Bank must retain control of its HR decision including staffing. OTDA may raise any concerns with any assigned staff with its Client Manager and/or Market Executive both of whom will carefully consider OTDA's feedback. This change would need to be reflected in the final contract. Is this acceptable?</p>	<p>Appendix C - Offeror's Certified Statements, 3.U., is hereby deleted and replaced with the following:                  The Offeror agrees that it shall be fully responsible for performance of work by its staff and by the subcontractor's staff. OTDA reserves the right to request removal of any Offeror staff or subcontractor's staff from working on OTDA's contract if, at OTDA's discretion, such staff is not performing in accordance with the Agreement.  <b>Appendix C is hereby deleted and replaced with Revised Appendix C.</b></p>
139	No Page Number exists	Appendix E - Administrative Forms, Contractor's Certification/Acknowledgements/Understanding.	<p><b>Contractor's Agreement - to Notify OTDA of Potential Future Conflicts</b> By signature below, the Authorized Signatory of the Contractor, certifies that he/she will notify OTDA of any/all new potential conflicts of interest and any/all new contractor staff that are prior OTDA employees during the term of the contract, prior to hiring of said individual, and will complete and submit an updated version of this form to OTDA at the time of becoming aware of any such new potential conflicts of interest, and of any/all new contractor or subcontractor staff that are prior OTDA employees. <b>Question:</b> We assume you mean we need to report the hiring of OTDA staff if they would become part of the team at Offeror that is tasked with providing service for the OTDA contract (we recommend the definition of the team be composed of a Client Manager a/k/a Project Manager, Treasury Sales Officer, Treasury Sales Analyst, Implementation Advisor and Customer Service Associate (or similar titles and roles) is that how you intend for us to interpret this? If so can we make that more clear in the Contract?</p>	<p>This certification needs to remain as worded as it is required of state agencies.  <b>Appendix C is hereby deleted and replaced with Revised Appendix C.</b></p>
140	No Page Number exists	Appendix E - Administrative Forms, OTDA Consultant Disclosure Reporting Requirements.	<p>This requirement is for consultants. We are not consultants and do not provide this reporting. We see this requirement show up in RFPs now and again and it is always removed once the bank vendor community offers its feedback. Is this acceptable? Is it acceptable to remove this appendix?</p>	The form is required pursuant to New York State Finance Law Section 163(4)(g). However, OTDA anticipates that the winning banking contractor will have nothing to report.

141	pp 1-8	Appendix I, NYS Insurance Requirements	<p>Our Insurance Experts offer the following revisions and insights. Are the below acceptable to OTDA? Bank reserves the right to obtain all insurance required under this contract through a program of self-insurance.</p> <p>All of Banks insurers are authorized to do business in the State of New York. All of Bank's insurers have an A.M. Best rating of A- Class VII or better.</p> <p>A.Conditions Applicable to Insurance</p> <p>1.Please see responses to section "B" below.</p> <p>2.Bank's insurance policies are written on an occurrence basis except for Cyber Liability, Errors &amp; Omission, and Fidelity Bond.</p> <p>3.Bank will furnish certificates of insurance evidencing the coverage referenced herein. Certificates of insurance will be on ACORD form or reasonably equivalent substitutes thereof.</p> <p>4.Bank's insurance will be primary and non-contributory.</p> <p>5.Bank cannot guarantee the requested insurance is maintained throughout the life of the contract, but intends to continue to purchase as long as it is commercially available and economically attractive.</p> <p>6.Bank does not disclose information regarding its deductibles and/or self-insured retentions.</p> <p>7.Subrogation will be waived except with respect to Workers' Compensation insurance.</p> <p>8. Bank's General Liability and Auto Liability include a blanket additional insured provision for any entity required by contract or agreement to be an additional insured.</p> <p>9. Bank's Excess policy does not follow form but provides at least as broad as or broader than the underlying policies.</p> <p>10. Bank will endeavor to provide thirty (30) days written notice upon termination or modification of coverage. Failure to provide notice of cancellation of coverage shall impose no obligation or liability of any kind upon Bank, its agents or representatives.</p> <p>11. Bank will furnish Certificate of Insurance prior to contract and at renewal.</p> <p>12. Bank will furnish certificates of insurance evidencing the coverage referenced herein.</p>	<p>Details of the insurance requirements can be negotiated during contract negotiation but preliminarily see answers to the insights provided below:</p> <p>A.Conditions Applicable to Insurance</p> <p>2.This can be negotiated during contract negotiations.</p> <p>3.Ok but please note that Accord forms are not acceptable for Worker's Compensation and Disability Insurance. Those two need to be provided as requested in Appendix I.</p> <p>4.Ok.</p> <p>5.Understood. The requirement is that the Bank reasonably comply with the Contract insurance requirements throughout the life of the contract. If a required insurance was not continued by the Bank, the Bank would be required to advise OTDA and we would negotiate an amendment of these insurance requirements.</p> <p>6. Self-insurance above \$100,000.00 are subject to approval from the OTDA. OTDA needs to be able to ensure the self-insurance is sufficient to provide equivalent protection as the contract's insurance requirements. In order to do this, evidence of the financial capacity to support the Self-Insurance program along with a description of that program, including, but not limited to, information regarding the use of a third party administrator shall be provided upon OTDA request.</p> <p>7. Ok.</p> <p>8. This can be negotiated during contract negotiations.</p> <p>9. This can be negotiated during contract negotiations.</p> <p>10. This can be negotiated during contract negotiations.</p> <p>11. OTDA will review when received.</p> <p>12. OTDA will review when received.</p>
142	pp 1-8	Appendix I, NYS Insurance Requirements	<p>Continued: Our Insurance Experts offer the following revisions and insights. Are the below acceptable to OTDA? B.Coverages and Limits</p> <p>1.Bank maintains Workers' Compensation coverage in compliance with all statutory requirements. Bank maintains Employer's Liability Coverage with limits of \$1,000,000 per occurrence/\$1,000,000 each accident or disease/\$1,000,000 aggregate.</p> <p>2.Bank maintains Commercial General Liability coverage (including Bodily Injury &amp; Property Damage, Personal &amp; Advertising Injury, Products &amp; Completed Operations, and Contractual Liability) with limits of \$2,000,000 per occurrence/\$2,000,000 aggregate. Bank can comply with the limits requested, however, please note, Bank does not provide dedicated/per project limits. Bank's General Liability and Auto Liability include a blanket additional insured provision for any entity required by contract or agreement to be an additional insured.</p> <p>3. Bank maintains Professional Liability (Errors &amp; Omissions) insurance on a claims-made basis providing coverage for loss or damage due to an act, error, omission, or negligence of Bank employees with a primary limit of \$15,000,000. Bank's insurance policies are written annually, thus eliminating the need to obtain an extended reporting provision to include run-off coverage or retroactive dates. Although it is Bank's intent to renew all coverages as required in this contract, the Bank reserves the right to self insure any lines of coverage.</p> <p>4.Bank maintains a Cyber Liability policy with a primary limit of \$25,000,000 which protects the Bank from the following causes:</p> <ul style="list-style-type: none"> <li>•Failure to protect confidential information from disclosure by Bank or entity to whom Bank has entrusted the confidential information including:</li> <li>•Regulatory defense expenses;</li> <li>•Failure of Bank's computer system security to prevent a computer attack;</li> <li>•Crisis management (including privacy notification expenses); or</li> <li>•Cyber-extortion</li> </ul> <p>5.Bank maintains a Financial Institution (Fidelity) Bond which protects Bank and its subsidiaries against financial loss arising from fraudulent and dishonest acts of employees, servicing contractors and certain others as well as loss from a variety of other crimes including theft and fraud with a primary limit of \$15,000,000. OTDA will not be included as "loss payees" on Bank's Fidelity Bond insurance policy.</p> <p>6.Bank's Excess policy does not follow form but provides at least as broad as or broader than the underlying policies.</p>	<p>Details of the insurance requirements can be negotiated during contract negotiation but preliminarily see answers to the insights provided below:</p> <p>1. OTDA will review when received.</p> <p>2. OTDA will review when received.</p> <p>3. OTDA will review when received. Any change to self-insurance will be subject to Appendix I, A.6.</p> <p>4. OTDA will review when received.</p> <p>5. This may be acceptable but it will be subject to OTDA approval.</p> <p>6. OTDA will review when received.</p>
143	No Page Number exists	Appendix P - Financial Proposal	<p>On February 22, 2023, Federal Reserve Financial Services announced that FedGlobal® ACH Payments service to Europe and Canada will be discontinued this year. This is very important news for the US payments industry as FedGlobal® ACH Payments acts as the sole processing gateway for all Nacha International ACH Transactions (IAT) entries going out of the United States. The decision by Federal Reserve Financial Services means that all US banks will need to cease offering the ACH IAT entry type to Europe and Canada in the coming months. We note that you have IAT transaction types in your Financial Proposal (Appendix P) table. We recommend this payment type be deleted from the RFP and in particular from the pricing table. Is this acceptable?</p>	<p>See answer to question #40.</p>
144	n/a	Appendix T	<p>Is OTDA willing to agree that the Bank will be expected to exercise reasonable care in the performance of its responsibilities under the Agreement?</p>	<p>No, bidder's suggested reasonable care standard is not sufficiently protective of the OTDA. OTDA may consider non-material changes during contract negotiations.</p>
145	2	Appendix T - Draft Agreement, Article 2, Merger of Documents/ Conflicts of Clauses	<p>In the order of precedence, the Bank's Treasury Terms and Conditions Agreement should follow only Appendix A - Standard Clauses for New York State Contracts and the Agreement. Is this acceptable?</p>	<p>See answer to question #102.</p>
146	3	Appendix T- Draft Agreement, Article 3, Compensation, Item 2 - Reimbursable Expenses	<p>2.Reimbursable Expenses – Separate records must be maintained for reimbursable expenses. Reimbursable expenses are the costs of paper and printing supplies directly and reasonably incurred by the Contractor associated with the printing of deposit slips and check stock, Deposit Supplies, cash receipt books costs incurred for each support account, postage, and FDIC expenses shall be subject to reimbursement by the OTDA. The OTDA reserves the right to require reasonable evidence, including the requirement that the Contractor follow formal bidding procedures, that the best available vendor has been obtained, price and all other factors considered. Would OTDA consider not rebidding check stock for every order? We recommend that a rebid for every 3rd order would be more efficient? Is this acceptable to OTDA? "FDIC expenses", located here and elsewhere, should be replaced throughout with "Deposit or Balance Assessment". This request is being made to modernize the use of language to industry standards. Is this acceptable?</p>	<p>OTDA does require rebidding for every order.</p> <p>The FDIC expenses actually cannot be a reimbursable expense. If necessary, those expenses are to be included by bidders in their bid prices in Appendix P.</p> <p>As such OTDA hereby deletes and replaces Appendix T's Article 3, Item 2 - Reimbursable Expenses with the following:</p> <p>2. Reimbursable Expenses – Separate records must be maintained for reimbursable expenses. Reimbursable expenses are the costs of paper and printing supplies directly and reasonably incurred by the Contractor associated with the printing of deposit slips and check stock, Deposit Supplies, cash receipt books costs incurred for each support account, and postage shall be subject to reimbursement by the OTDA. The OTDA reserves the right to require reasonable evidence, including the requirement that the Contractor follow formal bidding procedures for every order, that the best available vendor has been obtained, price and all other factors considered.</p>
147	pp 3-5	Appendix T- Draft Agreement, Article 3, Compensation, Item 3 - Banking Service Fees	<p>Will OTDA accept using this rate definition: the monthly average investment rate on the thirteen week Treasury Bill, as determined at the weekly auction and published on the US Treasury website). The other definition incorporates STIP rates and thus the rate is not a market rate. Requiring this non market rate will reduce the number of bids OTDA will receive and/or drive up services pricing to compensate. Supporting our request is the fact that 58 of the 60 accounts belong to counties, not NYS, and hold child support funds intended to be paid to custodial parents.</p>	<p>The rate definition remains as stated in the IFB.</p>
148	9	Appendix T- Draft Agreement, Article 7: Services	<p>The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement and to provide the Services and commodities as specified in accordance with the Appendices W and P. OTDA plays an important role in the accomplishment of the banking services, including providing information necessary for the Bank to perform its responsibilities under the Agreement. Thus, the Bank cannot accept sole and complete responsibility. The steps and functions required of OTDA are outlined in the Bank's Treasury Terms and Conditions Agreement; both parties must perform their functions. Request this section be modified to reflect same. Is this acceptable?</p>	<p>See answer to question #90.</p>
149	10	Appendix T- Draft Agreement, Article 7: Services	<p>The OTDA Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the Contractor's facilities. Suggest we negotiate this language as this is the Bank's position on site visits: Due to security requirements, unannounced visits are not permitted. Upon its reasonable request OTDA may conduct a limited, annual, supervised on-site or virtual assessment of the Bank's information security processes. The Bank will also determine the timing and process for the conduct of such audit or examination. Such on-site or virtual assessment will be in lieu of any written assessment of the Bank.</p>	<p>See answer to question #91. The provision as updated hereby is subject to contract negotiations.</p>

150	10	Appendix T- Draft Agreement, Article 7: Services	The Contractor agrees to strict adherence to the requirements outlined in Appendix W (Scope of Work). We agree to this conditioned upon it being modified in accordance with our questions and negotiations. Upon expiration of this Agreement, the Contractor agrees to cooperate in assisting OTDA with transition of the Services provided through this Agreement to any new Contractor selected for subsequent Contract periods. This is conceptually fine, we are happy to assist, though we want to make clear that upon maturity no new deposits and no new payments can be initiated (as we won't have a contract any longer). Can the existing language be clarified to reflect this?	OTDA understands and agrees upon expiration or termination no new deposits and no new payments can be initiated. If clarifications are needed, this language can be negotiated during contract negotiations.
151	10	Appendix T- Draft Agreement, Article 7: Services	Retainage for Non-Performance - We are asking for this provision to be removed and would like to rely on the remedies for Breach. See our question regarding Appendix B, 39 Remedies for Breach above.	In that there is no service level agreement with associated liquidated damages, the retainage for non-performance remains.
152	10	Appendix T- Draft Agreement, Article 8: Conflicts of Interest, B.	Conflicts related to new staff that are prior OTDA employees: Question: We assume you mean we need to report the hiring of OTDA staff if they would become part of the team at Offeror that is tasked with providing service for the OTDA contract (we recommend the definition of the team be composed of a Client Manager a/k/a Project Manager, Treasury Sales Officer, Treasury Sales Analyst, Implementation Advisor and Customer Service Associate (or similar titles and roles) Is that how you intend for us to interpret this? If so can we make that more clear in the Contract?	This Conflict of Interest provision was established in accordance with Public Officers Law. As such OTDA is unable to modify that provision.
153	10	Appendix T- Draft Agreement, Article 8: Conflicts of Interest, C.	Subcontractors: Would OTDA agree to limit subsection C, to subcontracts engaged solely to perform services for OTDA under this agreement?	This Conflict of Interest provision was established in accordance with Public Officers Law. As such OTDA is unable to modify that provision.
154	11	Appendix T- Draft Agreement, Article 8: Conflicts of Interest, D.	Termination: We request that OTDA's termination rights be limited to those articulated in Appendix B, 35. Termination pp 14-15.	No, although limited, there are a few additional termination rights beyond those in Appendix B, 35 which need to remain. Examples are termination provided per Appendix A or in the MWBE requirements.
155	11	Appendix T- Draft Agreement, Article 10: Transition	Clarification and request for change to language: The Bank shall not be required to share any bank proprietary information with a successor contractor. Does OTDA agree it is sufficient for the Contractor to use good faith effort to cooperate with reasonable requests to support the orderly transition? Recommend we update language to reflect this is OTDA agrees.	The Bank's proprietary information (which excludes OTDA and its subcontractor(s) information) is not required to be shared with a successor contractor. See answers to questions #56, 92, 150, 214 and 215.
156	11	Appendix T- Draft Agreement, Article 11: Record Retention	Would OTDA agree to language in the contract stating that in the event of a hold on certain records due to litigation regarding this contract, the parties would agree to any retention period that would follow completion of the litigation?	Appendix T, Article 11 is hereby amended to require a retention period for records involving matters in litigation of fifteen (15) years following the termination of the litigation.
157	12	Appendix T- Draft Agreement, Article 13: Other Agency Use	Offeror must retain the ability to approve or not approve any agency or entity that wishes to piggy back. Is this acceptable?	This is acceptable. The provision can be amended during contract negotiations.
158	13	Appendix T- Draft Agreement, Article 14: Misc. Provisions, C. Survival	We recommend that the parties identify and agree to specific, identified provisions that would survive the termination of the agreement, in accordance with their terms. Is this acceptable to ODA?	Yes, survivable provisions will be addressed during contract negotiations.
159	13	Appendix T- Draft Agreement, Article 15: Entire Agreement and Approvals	All provisions stated in the Banking Services in Support of Centralized Support Collections and Enforcement IFB are incorporated into this Agreement and are part of the Contractual obligations under this Agreement, unless explicitly stated herein that such provision(s) is deemed excluded from this Agreement.  This Agreement, attachments and the appendices attached hereto constitute the entire Agreement between the parties with respect to the subject matter; all other prior agreements, representations, statements, negotiations and undertakings are superseded hereby. Any provision of this Agreement that imposes or contemplates continuing obligations on a party will survive the expiration or termination of this Agreement. It is understood that unless the context clearly indicates otherwise, all references herein to this Agreement shall be deemed to include the Attachments and Appendices attached hereto, subject to Article 2 (Merger of Documents/ Conflicts of Clauses) of this Agreement.  Question: We request that OTDA agree that the Banking Services in Support of Centralized Support Collections and Enforcement IFB are incorporated into this Agreement may be incorporated into the Agreement to the extent agreed to by the parties during the course of negotiations and that, in the event of a conflict between the provisions of the IFB any agreement or document higher in the order of precedence, the provisions or terms contained in the document higher in the order of precedence, as agreed to by the parties, shall apply?  Question: Would OTDA agree that the parties will identify specific provisions that shall survive the termination of the agreement, in accordance with their terms, and that only such identified provisions shall survive?  Question: Would OTDA agree that the parties shall agree to and identify all such attachments and appendices that shall be included in the references to this Agreement?	OTDA agrees in concept and these provisions are subject to contract negotiation.
160	1	Appendix W, B. Key Staff	Any change in Key Staff must be preapproved in writing by OTDA. Question: Offeror must retain control over its staffing decisions. We will notify OTDA of permanent Key Staff changes. We would seek to negotiate something in this vein post award. Is this or something similar acceptable?	Agreed, this provision is subject to negotiation.
161	2	Appendix W, D. Controls and Records, 3, c.	a. Debit Blocking – The Contractor must ensure that all debits received as Fed-Wires or through the Automated Clearing House "ACH" system are blocked (i.e., not accepted for any of the sixty (60) bank accounts established), unless otherwise identified by an individual local district SCU or the OTDA or OSC. Anyone remitting funds through either of those systems must contact the respective bank account holder to have funds returned, if necessary. Caveat: yes Bank's can agree to this except when blocking a debit would violate Nacha rules. This will need to be addressed in the Contract. Is this acceptable?	Yes, but debits will not be accepted except in the limited situations described.
162	4	Appendix W, 4. Collateral, b.	As to any accounts opened under the OSC EIN, Contractor irrevocably constitutes and appoints the Comptroller of the State of New York its lawful attorney to transfer said securities on the records of the transfer officer, at the transfer office, with full power of substitution in the premises. We are not familiar with this last paragraph of section b. We understand that your want the 2 processing accounts collateralized in accordance with how OSC accounts are collateralized. Can you please explain what you mean by the above extract?	This paragraph means exactly as it states -- that the Contractor (i.e., bank) gives the Comptroller the authority to transfer any pledged collateral that has been placed on deposit with the State's custodian. Such authority would only be exercised by the State/OTDA in the event of a default by the Bank or as otherwise permitted as a matter of law.
163	pp 5-6	Appendix W, 5. Electronic Program Support	Online banking has advanced since this section was originally written. What you require is available in the Bank's online banking system: training including online guides (this would fit into your requirement for "manuals") and courses. Customer service reporting is also provided within CashPro, when OTDA enters a customer service request in the online Banking Portal it is captured, tracked and reported on systemically. All this to say, we would like to see this section updated to reflect today's modern systemic approach to these topics. Is this acceptable? As for item c.: The Contractor is responsible for providing System Security Administration. What is your definition please of this? In terms of OTDA being a user of the Bank's online banking system, all clients set up their own administrators which to us means OTDA selects its Administrators and they decide and set up who can do what and what dual controls they want to leverage in their CashPro banking set up. This has been the norm in banking for some time. Is that what you mean? If so, are you agreeable to updating this requirements? As for item f, there is no software involved, so can this clause be struck? If conceptually you are willing to discuss Section 5, so that it is updated to reflect how current systems work, the details can be worked out with the winning bidder post award. Is this acceptable?	Please see response to Question #10 (regarding manuals and training). Otherwise, the verbiage will remain as stated.
164	pp 5-6	Appendix W, 5. Electronic Program Support	f. The Contractor must, upon the determination by the OTDA, and after being advised by the OTDA, that any application of software supporting the electronic system is inoperable or unusable and cannot be repaired, correct, or replace at no charge to the OTDA the software application within seventy-two (72) hours of such determination. There is no software thus we request this be struck. Is this acceptable?	Appendix W, Section II.D.5.f. is hereby deleted.
165	7	Appendix W. Inventory Supplies	There are no specialty check stock producers that are able to produce your check stock and meet this time line. Bidder does not produce check stock; we rely on 3rd party vendors. Contract could be changed to indicate Bidder would endeavor to provide check stock as soon as possible but not later than 12 weeks? Is this acceptable?	Appendix W, Section II.E is hereby amended to replace, "within six (6) weeks..." with "within twelve (12) weeks..."

166	pp 7-8	Appendix W, F. Banking Services Manual	Given the evolution of online banking, respectfully request the wording be changed to indicate bidder must provide instructions within its online banking services system or, if that is not available, provide a custom manual? All directions needed are readily available in Bank's online banking system. Would that be acceptable?	Please see response to Question #10.
167	pp 8	Appendix W, G. Customer Services	The Contractor must receive, respond to, and resolve inquiries from each of the fifty-eight (58) local district SCUs, the Centralized Support Collection and Enforcement Contractor, the OTDA and OSC, and respond to and resolve those inquiries within three (3) business days from the receipt of the inquiry or problem unless otherwise approved by the OTDA. Customer service must be available via a toll-free number, "1-800", to each of the local district SCUs, the CSCE Contractor and the OTDA and OSC. The Contractor <b>must provide</b> to the OTDA, a weekly activity report, in a format approved by the OTDA, reflective of the customer service activity occurring during the week. OTDAs Customer Service is primarily occurring through the customer service dashboard in the Bank's online system. This system tracks and reports on each customer service case. We would like to eliminate the notion that manual reporting is still required in today's environment which is how the first paragraph reads. OTDA can simply view its service dashboard online. Recommend the wording be changed to say something like Bidder must make available online or, if that is not available, provide a manual report? Is this acceptable? In terms of the 3 business day requirement two request types that cannot apply to this standard are: check fraud which can take up to 60 days and any bulk requests such as updating signers on 59 accounts which would take longer. We would look forward to modifying the language to perhaps say that the goal is to respond to and resolve inquiries in 3 days to the extent reasonable and practicable. Is this acceptable? Also, we should exclude check fraud, bulk signature card updates and other longer term projects. Is this acceptable?	The verbiage will remain as stated.
168	8	Appendix W, G. Customer Services, item 3 Customer Service Log	3.Customer Service Log – A Customer Service activity log must be provided to the OTDA and include, at a minimum: a.Date of Call b.Time of Call c.Account Holder Name d.Recipient of Call e.Detail of Issue f.Resolution of Issue, or if unresolved, status of resolution in detail g.Date and Time of Resolution h.Source of error OTDAs Perhaps change the wording to say we must make customer service reporting available online or, if that is not available, provide a manual report? Is this acceptable? Such a language change would better reflect today's modern environment.	The verbiage will remain as stated.
169	9	Appendix W, G. Customer Services, item 4. Systems Log	4.Systems Log – The Contractor must provide a Systems Trouble Log to the OTDA, to include, at a minimum: a.Client Name b.Account Holder Name c.Account Number d.Date of Call e.Bank Contact f.Nature of Trouble 5.The Contractor must provide a complete copy of the Systems Trouble Log to the OTDA each Monday with the reports being inclusive of activity occurring during the prior Monday through Friday. OTDAs Customer Service is primarily occurring through the customer service dashboard in the Bank's online system. This system tracks and reports on what OTDA refers to as "Systems Trouble". OTDA can simply view its service dashboard online. Perhaps change the wording to say we must make the reporting available online or, if that is not available, provide a manual report? Is this acceptable? Such a language change would better reflect today's modern environment.	The verbiage will remain as stated.
170	pp 12-15	Appendix W, O. Outbound EFTs and Q. Inbound EFTs	Regarding your reference to IATs, we want to note the termination of IATs as follows: On February 22, 2023, Federal Reserve Financial Services announced that FedGlobal® ACH Payments service to Europe and Canada will be discontinued in the coming months. This is very important news for the US payments industry as FedGlobal® ACH Payments acts as the sole processing gateway for all Nacha International ACH Transactions (IAT) entries going out of the United States. The decision by Federal Reserve Financial Services means that all US banks will need to cease offering the ACH IAT entry type to Europe and Canada in the coming months.  View the Federal Reserve Financial Services announcement: Discontinuation of FedGlobal® ACH Payments to Canada and Europe (frtservices.org)  When will ACH IATs to Europe and Canada be discontinued? The dates on which IAT service to Europe and Canada will be discontinued are listed below: •The FedGlobal® ACH Payments Europe service will accept forward items originated through April 27, 2023. Return items will be allowed to flow from Europe through July 31, 2023. •The FedGlobal® ACH Payments Canada service will accept forward items originated through June 30, 2023. Return items will be allowed to flow from Canada through September 29, 2023. Recommend references to IATs be struck. Is this acceptable	See answers to questions #40 and 143.
171	16	Appendix W, V. Facilities.	Regarding branch locations: The Contractor must immediately provide the OTDA with a revised listing as changes occur. Would OTDA please replace "immediately" with "endeavor to timely provide"?	The verbiage will remain as stated.
172	pp 20 - 21	Appendix W, Z. OTDA Responsibilities	We wish to assert that OTDA has additional responsibilities not addressed in this section, as set for in Bidder's Treasury Terms and Conditions Agreement which outline how products and services work, rules (such as Nacha) that must be adhered to and the general tasks and responsibilities of clients who wish to use them. We recommend that this be woven into the contract in the appropriate locations. Is this acceptable? We would also recommend these additions: OTDA takes responsibility for actions it is required to undertake for the Contractor to provide the Services, including providing information that the Contractor reasonably requests to assist in the provision of Services or compliance with applicable laws or regulations, including but not limited to financial and identification information about the OTDA and identification information for people and organizations acting on the OTDA's behalf, including but not limited to its SDU Subcontractor. Is this acceptable?	OTDA agrees to cooperate and provide information reasonably requested by Contractor. Provisions to this effect can be negotiated during contract negotiation.
173	13	State of New York OTDA RFP, Section 4.8. Subcontracting	Vendor suggests adding the following language to the end of the section: Notwithstanding the foregoing, Contractor may, in the ordinary course of business, contract for third party services or products that are not dedicated to OTDA or are not material to a particular function constituting a part of the Services provided under the resulting agreement and such vendors shall not be considered "Subcontractors."	See answers to questions #70 and 174. Note: this doesn't apply to the MWBE/SDVOB requirements.
174	32	State of New York OTDA RFP Appendix B section 2 cc. Subcontractor	Vendor suggests changing the existing language to: cc. SUBCONTRACTOR means any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of the Contract with the Contractor, <b>but does not include vendors of Contractor who do not provide a service directly to the OTDA and are not hired by Contractor specifically for performance under the Agreement.</b>	Appendix B §2. cc is hereby deleted and replaced with the following: SUBCONTRACTOR means any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of the Contract with the Contractor, <b>but does not include vendors of Contractor who are not retained by Contractor and do not perform any Service under the Agreement.</b> Note: this does not apply to the MWBE/SDVOB requirements.

175	39	State of New York OTDA RFP Appendix B section 31.	Vendor suggests changing the existing language to: The Contractor will conduct background checks on all employees working on this Agreement, and shall retain only individuals with the moral fitness necessary to perform Services hereunder. If the Contractor is unable to determine an employee's fitness due to the results of a background check, then it shall forward a description of the results to the OTDA, for review and determination. If it is later determined that the Contractor knowingly rendered a false positive determination of an employee's fitness, failed to conduct a background check, or failed to reasonably interpret the results in confirming an employee's fitness to perform duties under the terms of this Agreement, in addition to any other remedies available to the OTDA, the OTDA may terminate this Agreement for cause. The Contractor shall provide immediate written notice to the OTDA if at any time the Contractor learns that its determination of an employee's fitness to perform duties under the terms of this Agreement was erroneous or has become erroneous because of changed circumstances. The Contractor will ensure that the provisions of this section are incorporated within all subcontracts, and acknowledges the responsibility for ensuring that these provisions are fully complied with by all Subcontractors. The Contractor will be required to maintain records related to the background investigations performed for the term of this Agreement in accordance with Contractor's record retention policy and applicable law. All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract, and must comply with all security and administrative requirements in the Contract. OTDA reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with OTDA's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract. OTDA reserves the right to reject and/or bar from any OTDA facility for cause any employee, Subcontractor, or agent of the Contractor.	See answer to question #69 and additionally OTDA hereby deletes the first paragraph of Appendix B §31 and replaces it with the following: The Contractor will conduct background checks on all employees working on this Agreement, and shall retain only individuals with the moral fitness necessary to perform Services hereunder. If the Contractor is unable to determine an employee's fitness due to the results of a background check, then it shall forward a description of the results to the OTDA, for review and determination. If it is later determined that the Contractor knowingly rendered a false positive determination of an employee's fitness, failed to conduct a background check, or failed to reasonably interpret the results in confirming an employee's fitness to perform duties under the terms of this Agreement, in addition to any other remedies available to the OTDA, the OTDA may terminate this Agreement for cause. The Contractor shall provide immediate written notice to the OTDA if at any time the Contractor learns that its determination of an employee's fitness to perform duties under the terms of this Agreement was erroneous or has become erroneous because of changed circumstances. The Contractor will ensure that the provisions of this section are incorporated within all subcontracts, and acknowledges the responsibility for ensuring that these provisions are fully complied with by all Subcontractors. The Contractor will be required to maintain records related to the background investigations performed in accordance with Contractor's record retention policy and applicable law. All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract, and must comply with all security and administrative requirements in the Contract. OTDA reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with OTDA's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract. OTDA reserves the right to reject and/or bar from any OTDA facility for cause any employee, Subcontractor, or agent of the Contractor. <u>Note:</u> question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.
176	41	State of New York OTDA RFP Appendix B section 35. b	Vendor suggests adding the following language to the end of the section: Contractor may also terminate or suspend any Services immediately without notice to OTDA if any of the following occurs: (a) OTDA becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (b) a material adverse change occurs in OTDA's business or financial condition; (c) Contractor has reason to believe that OTDA has engaged in fraudulent or illegal activity; (d) OTDA fails to maintain balances in accounts sufficient to cover overdrafts; (e) OTDA violates, or is in default under, the terms of this Agreement or any other agreement with Contractor; (f) OTDA fails to comply with security procedures or fails to provide information reasonably requested by Contractor; (g) Contractor determines it is impractical or illegal to provide any Services because of changes in laws, regulations or rules; (h) Contractor, in good faith, is unable to satisfy itself that any Services have been properly authorized by OTDA; or (i) Contractor, in good faith, deems itself insecure.	See answers to questions #87, 110, 111, 177 and 178.
177	41	State of New York OTDA RFP Appendix B section 35. c	Vendor suggests changing the existing language to: c. For Convenience This Contract may be terminated at any time by either party for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. If the Contract is terminated pursuant to this subdivision, OTDA shall remain liable for all accrued but unpaid charges incurred through the date of the termination.	See answers to questions #87, 110, 111, 176 and 178.
178	42	State of New York OTDA RFP Appendix B section 35. h	Vendor suggests adding the following language to the end of the section: Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination.	OTDA hereby adds the following at the end of Appendix B §35: Notwithstanding any termination, the terms of this Agreement shall apply to all transactions which have been initiated prior to termination.
179	44	State of New York OTDA RFP Appendix B section 39. c	Vendor recommends striking all language in this section.	OTDA hereby deletes Appendix B §39.c.
180	44	State of New York OTDA RFP Appendix B section 43.	Vendor suggests changing the existing language to: Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its officers, and employees will comply fully with all security procedures of OTDA related to OTDA's facilities set forth in the Contract or otherwise communicated in advance to the Contractor.	Section is deleted per answer to question #73.
181	44	State of New York OTDA RFP Appendix B section 45. a	Vendor recommends striking all language in this section.	See answer to question #74.
182	45	State of New York OTDA RFP Appendix B section 45. b	Vendor recommends striking all language in this section.	See answer to question #74.
183	45	State of New York OTDA RFP Appendix B section 45. c	Vendor recommends striking all language in this section.	See answer to question #74.
184	45-46	State of New York OTDA RFP Appendix B section 45. d	Vendor recommends striking all language in this section.	See answer to question #74.
185	46	State of New York OTDA RFP Appendix B section 45. e	Bank recommends striking all language in this section.	See answer to question #74.
186	46-47	State of New York OTDA RFP Appendix B section 46	Bank suggests changing the existing language to: Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity applicable to Contractor in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of OTDA that it substantially meets or exceeds all requirements of the Solicitation and Contract and any applicable laws applicable to Contractor, including but not limited to, permits, licensing, and shall provide such proof as required by OTDA. Failure to comply or failure to provide proof may constitute grounds for OTDA to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by OTDA. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.	See answer to question #121. The provision can be modified during contract negotiation. <u>Note:</u> question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.
187	54	State of New York OTDA RFP Appendix B section 58 a. iii	Bank suggests changing the existing language to: iii. For purposes of this clause, "Custom Products" means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for OTDA under the Contract as a deliverable solely for and paid for by OTDA under the Contract.	OTDA agrees in concept, the language of this provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s). <u>Note:</u> question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.

188	54-55	State of New York OTDA RFP Appendix B section 59 a.	Bank suggests changing the existing language to: a.Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers (“date of notice”) that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor (“withdrawn support”) is no longer going to be offered, Contractor shall be required to: (i) notify OTDA in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 42 <del>not less than 60</del> <b>days</b> from the date of notice; and (iii) at OTDA’s option, and in order to enable OTDA to continue the use and maintain the Product, provide OTDA with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that OTDA is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge. In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above <del>within 5 business days of promptly following</del> <b>promptly following</b> Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support. The provisions of this subdivision (a) shall not apply or eliminate Contractor’s obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to OTDA approval, to an alternate Subcontractor.	OTDA agrees in concept, the language of this provision is subject to contract negotiation. Per the SOW, OTDA requires access to the Bank portal(s). <u>Note:</u> question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.
189	57	State of New York OTDA RFP Appendix B section 60 i.	Vendor suggests changing the existing language to: The Contractor agrees to comply with any <b>applicable</b> federal requirements such as, among others not listed above, the Copeland “Anti-Kickback Act” (18 USC 874), and Section 306 of the Federal Clean Water Act and to provide to OTDA any <b>reasonably</b> requested documents supporting such compliance, including if necessary creating such supporting documentation <b>upon at least 30 days prior written notice to Contractor.</b>	OTDA is hereby deleting the first paragraph of Appendix B §60.i. and replacing it with the following: The Contractor agrees to comply with any <b>applicable</b> federal requirements such as, among others not listed above, the Copeland “Anti-Kickback Act” (18 USC 874), and Section 306 of the Federal Clean Water Act and to provide to OTDA any <b>reasonably</b> requested documents supporting such compliance, including if necessary creating such supporting documentation <b>upon at least 30 days prior written notice to Contractor.</b> <u>Note:</u> question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.
190	60	State of New York OTDA RFP Appendix B-1, 1. Definitions	Vendor suggests changing the existing language to: “Authorized Persons” means the Contractor’s affiliates, advisors, directors, officers, employees, subcontractors or other agents who are authorized and have a business justification to access Protected Information to enable Contractor to perform the services pursuant to the Agreement.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
191	60	State of New York OTDA RFP Appendix B-1, Section 1. Definitions	Vendor recommends striking all language in the “Follow the Sun” paragraph.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
192	60-61	State of New York OTDA RFP Appendix B-1, Section 6 (Now Section 4), Data Exchange Details	Vendor suggests changing the existing language to: Prior to OTDA’s sharing of any data pursuant to this Agreement, Contractor and OTDA shall work together to provide and establish a secure, encrypted (both in transit and at rest) method of data exchange for any transfer of such data which shall, at a minimum, comport with the standards set and required by the New York State Chief Information Security Office (NYS CISO) to the extent that the standards align with Contractor’s existing requirements under federal law and regulation and industry standards, and, where required, any additional heightened compliance obligations applicable to and necessitated by the data involved in any such exchange. The NYS CISO’s office shall, as OTDA deems appropriate, be provided with details of such proposed method of exchange for review and approval. The Parties agree that they will work together to create and keep current a Technical Service Description, to be made part of this Agreement, which sets forth the details of the Protected Information which OTDA shall furnish to Contractor, including, at a minimum, the frequency of the disclosure, timing, technical details of the method of data exchange (including all relevant details), and the format of any response as between the Parties.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
193	61	State of New York OTDA RFP Appendix B-1, Section 6a. Data Protection	Vendor suggests changing the existing language to: a.Implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure, or theft of Protected Information. Such security measures shall comply with financial industry best practices and shall, at a minimum, comply with those requirements set forth by the Contractor for the protection of its own sensitive information, and must comply with all applicable state and federal law, rules, regulations, and policies.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
194	61	State of New York OTDA RFP Appendix B-1, Section 6b. Data Protection	Vendor suggests changing the existing language to: b. All Protected Information shall be encrypted at rest and in transit, in accord with, at a minimum, the standard set forth by the NYS CISO to the extent that the standards align with Contractor’s existing requirements under federal law and regulation and industry standards, all applicable state and federal law, rules, regulations and policies and, as appropriate, industry best practices.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
195	61	State of New York OTDA RFP Appendix B-1, Section 6c. Data Protection	Vendor suggests changing the existing language to: c.At no time shall any Protected Information be copied, disclosed or retained by the Contractor for any purpose other than performing the services under this Agreement except as may be necessary for Contractor to remain in compliance with its regulatory requirements and internal retention policy.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
196	61	State of New York OTDA RFP Appendix B-1, Section 6g. Data Protection	Vendor suggests changing the existing language to: g. The contractor must carefully, thoroughly, and thoughtfully vet all software solutions and hardware used to verify that they are compliant with the requirements set forth by the NYS CISO to the extent that the standards align with Contractor’s existing requirements under federal law and regulation and industry standards and fulfill the compliance obligations for the protection of OTDA’s Protected Information. This vetting process shall also extend to all software solutions and hardware used by Authorized Persons.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
197	61	State of New York OTDA RFP Appendix B-1, Section 7 (Now 6), Data Security	Vendor suggests changing the existing language to: Upon 90 days’ written request, no more than once per calendar year, Contractor shall promptly disclose its non-proprietary security processes and technical limitations to OTDA such that adequate protection for Protected Information is attained. At a minimum Contractor represents and warrants that the security requirements and processes shall comport with the security standards and protocols set by the NYS CISO to the extent that the standards align with Contractor’s existing requirements under federal law and regulation and industry standards. In addition, the Contractor shall also comply with any state and/or federal laws, rules, regulations and/or policies that are applicable to the data being exchanged under this Agreement, including any heightened compliance obligations. The system and procedure that the Contractor will maintain for handling, storage, use, and destruction of Protected Information governed by this agreement will be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
198	61	State of New York OTDA RFP Appendix B-1, Section 8. Data Location	Vendor suggests striking all language in this section.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).

199	61-62	State of New York OTDA RFP Appendix B-1, Section 9, Contract and Data Center Audit	<p>Vendor suggests changing the existing language to:                  Upon 90 days' written request, no more than once per calendar year, the Contractor shall allow OTDA and any other authorized government agency to audit the Contractor's compliance with the security procedures set forth in this section. Contractor shall perform an independent audit of its data centers which contain Protected Information at least annually, and provide OTDA a copy of such audit report. Any non-critical deficiencies identified in the audit report or where the Contractor is found to be noncompliant with Agreement safeguards must be remedied, within 90 days of the issue date of the audit report with proof of remediation provided to OTDA. Critical deficiencies must be immediately remedied within a timeframe that OTDA approves. The completion of these requirements is at the Contractor's expense with no additional cost to OTDA.</p> <p>The contractor will maintain a formal policy and procedures for the handling, storage, use, and destruction of Protected Information governed by this Agreement which must be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.</p> <p>Upon 90 days' written request, no more than once per calendar year, the contractor will permit OTDA, or their agent, reasonable access to enter upon Contractor's premises during business hours to inspect and review their safeguards and procedures for protecting the confidentiality, privacy, security, and compliance of the Protected Information. The contractor will also reasonably cooperate with OTDA, or their agent, in connection with any request for access to staff, information, or material related to an OTDA confidentiality, privacy, security, or compliance review, audit, or monitoring visit.</p> <p>Upon at least 60 days prior written notice, not more than once per calendar year, at the contractor's expense, Contractor will make its confidential and proprietary Service Organization Control (SOC) 2 Type 2 audit report or approved equivalent available for review in a secure fashion, onsite at a Contractor facility or via a video conference call without the option of a record or copy being obtained by OTDA.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
200	62	State of New York OTDA RFP Appendix B-1 section (Now 7), Access	<p>Vendor suggests changing the existing language to:                  The contractor will limit access to Protected Information to Authorized Persons who have a legitimate business justification for access to such data for the purposes described in this Agreement.</p> <p>Except for assignments arising by operation of law following a merger or acquisition, the contractor may not assign or subcontract the Agreement, its obligation or interest hereunder, without the express, written consent of OTDA. Any assignment or subcontract made without such consent will be null and void and will constitute grounds for immediate termination of the Agreement by OTDA.</p> <p>Except as may be required by law, rule, regulation, bank regulatory agency or bank examiner, Contractor expressly represents and agrees that it will not re- disclose Protected Information provided by OTDA under this Agreement to third parties, including contractors or subcontractors, without the prior, written approval from OTDA. Authorized Persons shall not disseminate, use, or permit the dissemination or use of Protected Information in any manner not provided for in this agreement without the express prior, written consent from OTDA.</p> <p>The contractor will undertake precautions to limit access to disclosed Protected Information to Authorized Persons only. The contractor will adopt safeguards and procedures to limit dissemination only to authorized individuals with a legitimate business need/purpose related to the purpose of this project as set out in this Agreement.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
201	62	State of New York OTDA RFP Appendix B-1 Section 12(Now 9), Confidentiality Agreements	<p>Vendor suggests changing the existing language to:                  Section 11. Confidentiality Obligations                  Contractor shall require Authorized Persons to be or agree to be bound by confidentiality obligations substantially similar to those contained herein prior to receiving any such Protected Information.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
202	62	State of New York OTDA RFP Appendix B-1 Section 13, Background Investigation and Fingerprinting	<p>Vendor suggests changing the existing language to:                  Contractor shall have a written personnel security policy that ensures a background investigation is completed for any individual who will need access to perform his/her job duties to Protected Information with heightened compliance obligations. The policy will identify the process, steps, and timeframes for determining whether an employee may be granted access to such Protected Information. The results of the background check will be reviewed by the Contractor to determine whether the applicant is suitable for access to such Protected Information. Suitability is defined as having verified citizenship or residency and no prior criminal offense or offenses where the nature of the offense creates a risk of misuse of such Protected Information as defined within this Agreement.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
203	62-63	State of New York OTDA RFP Appendix B-1 Section 14(Now 10), Notification of Legal Requests	<p>Vendor suggests changing the existing language to:                  The Contractor shall, to the extent permitted by applicable law, rule or regulation, promptly inform OTDA in writing upon receipt of any legal, investigatory, or other mode or method of demand (including but not limited to FOIL or FOIA requests electronic discovery, litigation holds, and discovery searches) for access to Protected Information that is not otherwise authorized under this Agreement to allow OTDA to, at OTDA's sole cost and expense, pursue all necessary legal action to prevent any disclosure including, but not limited to, moving to quash subpoenas issued for such information. The Contractor will provide reasonable cooperating in such actions. Notwithstanding anything to the contrary herein, the Contractor may disclose, without any notice to OTDA, Protected Information to a bank regulatory agency or in connection with an examination of Contractor's records by bank examiner.</p> <p>The notification shall be directed to:                  OTDA General Counsel                  40 North Pearl Street 16 C                  Albany, NY 12243                  (518) 474-9502                  otda.GC.Notifications@otda.ny.gov</p> <p>OTDA shall, to the extent permitted by applicable law, rule or regulation, promptly inform Contractor in writing upon receipt of a FOIL or FOIA request for access to Contractor's confidential, trade secret, or proprietary materials to allow Contractor to protect such information from public disclosure.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
204	63	State of New York OTDA RFP Appendix B-1 Section 16, Return/Destruction of Protected Information	<p>Vendor suggests changing the existing language to:                  In the event of request by ODTA following termination or expiration of the Agreement, Contractor shall promptly implement an orderly return of all Protected Information, whether in digital or any other form, in a mutually agreeable format at a time agreed to by the parties and/or at the direction of OTDA. Thereafter, the Contractor shall, unless otherwise advised in writing by OTDA, promptly destroy and/or sanitize, as appropriate to the medium, such data and any extracts, copies, or backups of same thoroughly and irretrievably.</p> <p>Upon request, Contractor shall thereafter certify in writing and provide proof that these actions have been completed within 30 days of termination or expiration of this Agreement or within seven days of the request of an agent, employee or officer of OTDA, at the discretion of OTDA. Except for copies that may be retained pursuant to Contractor's internal document retention and regulatory requirements, Contractor will not make, retain, copy, duplicate, or otherwise use any copies of Protected Information after completion of the purpose for which the data disclosed is served without prior written permission from OTDA.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
205	63	State of New York OTDA RFP Appendix B-1 Section 17, Data Retention	<p>Vendor suggests changing the existing language to:                  Notwithstanding any other obligation under this Agreement, Contractor agrees that it will preserve the Protected Information in a manner that complies with all federal, state and local laws, rules, regulations, and policies applicable to Contractor for the purposes of ensuring applicable data records retention obligations are met.</p>	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).

206	63	State of New York OTDA RFP Appendix B-1 Section 18 Compliance with Information Security Breach Notification Act and Other Laws	Vendor suggests changing the existing language to: Contractor represents and warrants that its collection, access, use, storage, disposal, processing, and disclosure of Protected Information does and will comply with all federal, state and local privacy, confidentiality, security, and data protection laws, and regulations, applicable to Contractor. Contractor warrants that, if it were to become applicable to Contractor and the Services provided by Contractor to OTDA, Contractor, will comply with the New York State Information and Security Breach Notification Act and the SHIELD Act (General Business Law Section 899-aa and 899-bb; State Technology Law Section 208). Subject to the limitation of liability provisions of Section 49 in General, Contractor will be responsible for the Authorized Persons compliance with the aforementioned state, federal, and local laws and regulations, applicable to Contractor.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
207	63	State of New York OTDA RFP Appendix B-1 Section 19 Vulnerability Scanning	Vendor suggests changing the existing language to: The contractor must perform appropriate and required environment vulnerability scanning in accordance with Industry best practices and standards. The contractor must address all high and medium vulnerabilities found during scanning in a reasonable timeframe as agreed upon with OTDA.  When software vulnerabilities are revealed and addressed by a vendor patch, the Contractor will obtain the patch from the applicable vendor and categorize the urgency of application as either "critical" or "non-critical" in nature. The contractor will apply all critical security patches, hotfixes, or service packs as they are tested and determined safe.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
208	63-64	State of New York OTDA RFP Appendix B-1 Section 20. Information Security Incident and Information Security Breach	Vendor suggests changing the existing language to: If the Contractor or any Authorized Person becomes aware of or has knowledge of any actual Information Security Breach (Security Breach), then the Contractor shall after notifying Contractor's federal financial regulators, also notify affected clients, customers, and state agencies as required under Contractor's Incident Response Plan. Such notification will be to the OTDA contact listed below of the Security Incident or Security Breach via the email address noted. At such time, Contractor shall provide OTDA with the name and contact information for an employee of Contractor who shall serve as Contractor's primary security contact and shall be available to assist OTDA and keep OTDA fully and timely notified of developments relating to any such Security Breach utilizing the following contact information:  OTDA General Counsel 40 North Pearl Street 16 C Albany, NY 12243 (518) 474-9502 otda.GC.Notifications@otda.ny.gov  Should a Security Breach occur, promptly following the requisite notification to OTDA, Contractor shall also include the Contractor's reasonable estimate of the nature of the Protected Information exposed together with the steps to be taken by Contractor to limit such exposure and avoid a recurrence thereof.  Notification and Assistance to Affected Persons. Contractor shall be responsible for: A. Promptly notifying individuals whose Protected Information was compromised by an Information Security Breach ("Affected Persons") B. If requested by OTDA and required by law, provide credit monitoring services, identity theft consultation and restoration, identity theft insurance, public records monitoring, toll free number and call center, payday loan monitoring, and any other services deemed reasonably necessary by OTDA to Affected Persons for a minimum of one year or longer, as determined by OTDA, (together referred to as "Affected Persons Assistance"). C. Costs. The Contractor shall bear all costs associated with providing Affected Persons Assistance. OTDA may reduce any Contractor invoice by an amount attributable to the Contractor's failure to satisfactorily provide Affected Persons Assistance.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
209	64	State of New York OTDA RFP Appendix B-1 Section 21 (Now 15) Business Continuity and Disaster Recovery	Vendor suggests changing the existing language to: The contractor will provide OTDA with a confirmation that contractor has a business continuity and disaster recovery plan that includes detailed precautions to minimize the effects of any disaster or interruption of service so that OTDA can rapidly continue to operate and resume mission-critical functions. OTDA will work with the Contractor to provide an analysis of business processes and continuity needs. The Contractor will provide technical support staff with the skills required to interface with OTDA's application, network, hardware, and software during planning and preparation for disaster recovery and business continuity testing and/or during any declaration of an actual disaster. Minimum recovery time objective (RTO) and recovery point objective (RPO) will be determined by OTDA.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
210	64	State of New York OTDA RFP Appendix B-1 Section 22. Suspension/Termination	Vendor suggests changing the existing language to: OTDA agrees to provide Protected Information pursuant to this Agreement subject to the representations and agreements by the Contractor contained in this document. OTDA will suspend the Agreement and the further disclosure of any Protected Information hereunder if: (i) Contractor fails to comply with any provision of this Agreement or (ii) OTDA General Counsel believes in good faith that the Contractor has violated its obligations to maintain the confidentiality, privacy, security and/or compliance status of such data or limit properly limit dissemination of such data. Such suspension will continue until corrective action, approved by OTDA, has been taken. In the absence of prompt and satisfactory corrective action, OTDA may, at its sole discretion, terminate the Agreement. Upon termination, the Contractor must promptly return all Protected Information obtained by the Contractor or Authorized Persons under the Agreement pursuant to the terms and conditions of the Return/Destruction of Protected Information section within this Agreement.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
211	65	State of New York OTDA RFP Appendix B-1 Section 24. Assignment or Subcontracting	Vendor suggests changing the existing language to: Except for assignments arising by operation of law following a merger or acquisition, the Contractor may not assign or subcontract the obligations or interests outlined in this Section of this Agreement, without the express, prior written consent of OTDA. Any assignment or subcontract made without such consent will be null and void and shall constitute grounds for immediate termination of the Agreement by OTDA.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
212	65	State of New York OTDA RFP Appendix B-1 Section 25. Cloud Computing Provisions	Vendor suggests changing the existing language to: All privacy, confidentiality, security and set out in this Agreement shall apply to any cloud computing solution proposed for use by the Contractor to accomplish any obligation under this Agreement.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).
213	66	State of New York OTDA RFP Exhibit 1- Confidentiality/Non-Disclosure Agreement; Attachments A & B	Bank will not have individual employees/representatives execute customer-specific NDAs. Bank will agree to mutually agreed-upon confidentiality terms and to ensure its employees and representatives abide by them. As such, this Exhibit and Attachments A and B hereto should be removed as inapplicable.	OTDA is hereby deleting in its entirety Appendix B-1 dated January 2023 and replacing it with the Revised Appendix B-1 (posted with the Q&A).

214	192	State of New York OTDA RFP Appendix T, Article 7. Services	<p>Vendor suggests changing the existing language to:                  OTDA hereby retains the Contractor to perform the Services, and the Contractor agrees to perform the Services, which shall include all deliverables, work and/or work products as described in Appendix W (Scope of Work).                  Nothing contained herein shall prohibit OTDA from Contracting at any time with third parties or from performing any of the work itself or through other State entities, for any Services that otherwise may be requested or required of the Contractor pursuant to this Agreement, and the Contractor shall not assert any exclusive right to perform such Services.                  The Contractor shall provide to OTDA, upon request, Services and commodities at the rates contained in Appendix P, or less.                  The Contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement and to provide the Services and commodities as specified in accordance with the Appendices W and P.                  The OTDA Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the Contractor's facilities.                  The Contractor agrees to strict adherence to the requirements outlined in Appendix W (Scope of Work).                  Upon expiration of this Agreement, for a period of thirty (30) days, the Contractor agrees to reasonably cooperate in assisting OTDA with transition of the Services provided through this Agreement to any new Contractor selected for subsequent Contract periods; provided, that such new Contractor shall be responsible for developing the transition plan.</p>	<p>OTDA is hereby deleting the last paragraph of Appendix T Article 7 and replacing it with the following:                  Upon expiration of this Agreement, for a period of six (6) months thereafter, the Contractor agrees to reasonably cooperate in assisting OTDA with transition of the Services provided through this Agreement to any new Contractor selected for subsequent Contract periods; provided, that such new Contractor shall be responsible for developing the transition plan.                  Note: question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.</p>
215	194	State of New York OTDA RFP Appendix T, Article 10. Transition	<p>Vendor suggests changing the existing language to:                  The Contractor shall reasonably cooperate with any successor contractor for up to thirty (30) days in order to accomplish a smooth and orderly transition, so that the Services required are uninterrupted and are not adversely impacted by the change in contractor.</p>	<p>OTDA is hereby deleting the last paragraph of Appendix T Article 7 and replacing it with the following:                  The Contractor shall reasonably cooperate with any successor contractor for up to six (6) months in order to accomplish a smooth and orderly transition, so that the Services required are uninterrupted and are not adversely impacted by the change in contractor.                  Note: question edited to make the requested change more visible and edit made hereby to the section shown in red in the answer.</p>
216	194-195	State of New York OTDA RFP Appendix T, Article 11. Record Retention and Destruction	<p>Vendor suggests changing the existing language to:                  In addition to the other contract record retention requirements, all records involving matters in litigation or audit must be kept according to Contractor's internal document retention schedule and legal and regulatory requirements. Electronic copies of any documents related to this Agreement may be substituted for the originals with the prior written approval of OTDA, provided that the copy procedures are accepted by OTDA as reliable and are supported by an adequate retrieval system.                  The Contractor shall be responsible for assuring that the provisions of this Article shall apply to any subcontract related to performance under this Agreement. As used throughout this Agreement, the terms "subcontractor" and other like terms do not include vendors of Contractor that do not provide a service directly to the OTDA and are not hired by Contractor specifically for performance under the Agreement.</p>	<p>No, the record retention period for matters in litigation or audit must be set. See answer to question #156.                  Regarding the requested addition as to subcontractor, see answer to question #100.</p>
217	195	State of New York OTDA RFP Appendix T, Article 13. Other Agency Use	<p>Vendor suggests changing the existing language to:                  Upon request by any other New York State Agency, the Contractor shall may enter into an Agreement with such agency for the purchase of the goods and services that are the subject of this Agreement. Such new Agreement shall provide that the cost of such goods and services to the agency entering into such Agreement shall be the same as charged to OTDA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the agency requires the Contractor to be obligated to standard Contractual provisions that are more onerous than those contained in Appendix A. In the event that a volume discount is applicable to the increase in services due to other agency use, both OTDA and the other agency shall share in the cost savings.                  Upon request by a local social services district, New York City Human Resources Administration (NYC HRA) or its designated purchasing agent, the Contractor shall may enter into an Agreement with such district or agent for the purchase of the goods and services that are the subject of this Agreement. Such new Agreement shall provide that the cost of such goods and services to the district/agent entering into such Agreement shall be the same as charged to OTDA under this Agreement except that the Contractor shall be permitted to negotiate an increase in price to the extent it can show an increase in the cost of providing goods and services which can be attributed to the fact that the municipality constituting the local social services district requires the Contractor to be obligated to standard Contractual provisions that are more onerous than those contained in Standard New York State Appendix A. In the event that a volume discount is applicable to the increase in services due to other agency use, both OTDA and the other agency shall share in the cost savings.</p>	<p>See answer to question #157.</p>
218	217	State of New York OTDA RFP Appendix W, Y. Disaster Recovery	<p>Vendor suggests changing the existing language to:                  The Contractor has in place a Disaster Recovery Plan. Upon request Contractor will provide an Operational Resiliency Program overview. Contractor, as a regulated entity, has an incident response plan as required under the Gramm-Leach-Bliley Act and the regulations promulgated thereunder, including the Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice, and applicable state breach notification laws (the "Incident Response Plan"). In addition to notifying Contractor's federal financial regulators, Contractor will also notify affected clients, including OTDA, as required under the Incident Response Plan.                  1. The Operational Resiliency Program overview will be presented within 30 days of the start of Transition. Equipment backup must be tested for compatibility and capacity, with any identified shortcomings corrected. Any backup facility must be able to provide processing for a minimum of two (2) months.                  2. The Contractor must perform at the OTDA's request, a minimum of one (1) disaster recovery test every six (6) months and provide a report of the result of this test to OTDA within 15-days of the completion of such a test.</p>	<p>The language of this provision may be subject to contract negotiation.</p>

Revised Appendix B-1

**OTDA SECURITY AND CONFIDENTIALITY TERMS**

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**The Security and Confidentiality Terms set forth in this Appendix B-1 are made part of the Agreement between OTDA and the Contractor.**

**1. DEFINITIONS**

For purposes of this Appendix B-1 the following terms shall have the following meanings:

**“Protected Information”** means data or information to which the Contractor is given access which OTDA creates, receives, or maintains, which is, pursuant to federal and/or state laws, rules, regulations, policies or agreements, deemed confidential, personal, private and/or sensitive. Such data or information may be present or stored in any form or medium and includes, but is not limited to:

- a. Data or information obtained from sources outside of OTDA;
- b. Data or information maintained in and/or obtained from OTDA-owned applications, systems, networks and/or databases;
- c. Data or information identifying an individual, particularly where such disclosure could result in an unwarranted invasion of personal privacy;
- d. Computer codes or other electronic or non-electronic data or information, the disclosure of which could jeopardize the compliance stature, security or confidentiality of OTDA’s information technology solutions, applications, systems, networks or data;
- e. Any other material designated by OTDA as being “Confidential,” “Personal,” “Private,” or otherwise “Sensitive.”

**“Authorized Persons”** means the Contractor’s employees, subcontractors or other agents who are authorized and have a business justification to access Protected Information to enable Contractor to perform the services pursuant to the Agreement.

**“Information Security Breach”** means the unauthorized access by a non-Authorized Person of Protected Information as defined in New York State Information and Security Breach Notification Act (General Business Law Section 899-aa and 899-bb; State Technology Law Section 208).

**“OTDA Contact”** means the person or persons designated in writing by OTDA to receive Information security incident or Information security breach notifications.

**2. PURPOSE OF DATA**

Contractor represents that it is requesting and/or providing Protected Information solely for purposes specified in this solicitation. OTDA will release Protected Information to Contractor exclusively for this purpose. Contractor shall use the Protected Information only for the authorized purposes specified in this Agreement.

**3. OWNERSHIP OF DATA**

Contractor agrees that OTDA shall be deemed the “owner” of Protected Information disclosed by OTDA to Contractor under this Agreement including for purposes of complying with the requirements of General Business Law Section

899-aa and 899-bb.

**4. DATA EXCHANGE DETAILS**

Prior to OTDA’s sharing of any data pursuant to this Agreement, Contractor and OTDA shall work together to provide and establish a secure, encrypted (both in transit and at rest) method of data exchange for any transfer of such data which shall, at a minimum, comport with the standards set and required by the [New York State Chief Information Security Office](#) (NYS CISO) and, where required, any additional heightened compliance obligations applicable to and necessitated by the data involved in any such exchange. The NYS CISO’s office shall, as OTDA deems appropriate, be provided with details of such proposed method of exchange for review and approval. The Parties agree that they will work together to create and keep current a Technical Service Description, to be made part of this Agreement, which sets forth the details of the Protected Information which OTDA shall furnish to Contractor, including, at a minimum, the frequency of the disclosure, timing, technical details of the method of data exchange (including all relevant details), and the format of any response as between the Parties.

**5. DATA PROTECTION**

Contractor shall safeguard the confidentiality, integrity, and availability of Protected Information.

**6. DATA SECURITY**

Contractor represents and warrants that the security requirements and processes shall comport with the security standards and protocols set by the [NYS CISO](#). In addition, the Contractor shall also comply with any state and/or federal laws, rules, regulations and/or policies that are applicable to the data being exchanged under this Agreement, including any heightened compliance obligations. The system and procedure that the Contractor will maintain for handling, storage, use, and destruction of Protected Information governed by this agreement will be sufficient to allow OTDA and/or their designee(s) to audit compliance with this Agreement.

**7. ACCESS**

The contractor will limit access to Protected Information to Authorized Persons who have a legitimate business justification for access to such data for the purposes described in this Agreement.

Access to Protected Information by Authorized Persons shall be closely monitored by Contractor and shall be removed in the event such access is no longer justified by a legitimate business need or where the person separates from service. Such removal must be immediate but in no event later than the close of business on the date of the triggering event.

Notice of all such changes will be sent to:

**OTDA General Counsel 40**  
North Pearl Street, 16C  
Albany, New York 12243  
(518) 474-9502  
otda.GC.Notifications@otda.ny.gov

The contractor may not assign or subcontract the Agreement, its obligation or interest hereunder, without the express, written

consent of OTDA. Any assignment or subcontract made without such consent will be null and void and will constitute grounds for immediate termination of the Agreement by OTDA.

Contractor expressly represents and agrees that it will not re-disclose Protected Information provided by OTDA under this Agreement to third parties, including contractors or subcontractors, without the prior, written approval from OTDA. Authorized Persons shall not disseminate, use, or permit the dissemination or use of Protected Information in any manner not provided for in this agreement without the express prior, written consent from OTDA.

The contractor will undertake precautions to limit access to disclosed Protected Information to Authorized Persons only. The contractor will adopt safeguards and procedures to limit dissemination only to authorized individuals with a legitimate business need/purpose related to the purpose of this project as set out in this Agreement.

## **8. TRAINING**

The Contractor will ensure that all Authorized Persons who have access to any Protected Information for authorized purposes set forth in this Agreement have been instructed regarding the confidential nature of the Protected Information, the safeguards required to protect such data, and the sanctions in applicable state, federal, and local laws, rules, regulations and/or policies for unauthorized disclosure of Protected Information.

## **9. CONFIDENTIALITY AGREEMENTS**

Contractor shall require Authorized Persons to sign a confidentiality and non-disclosure in relation to access to Protected Information.

## **10. NOTIFICATION OF LEGAL REQUESTS**

The Contractor shall immediately inform OTDA in writing upon receipt of any legal, investigatory, or other mode or method of demand (including but not limited to FOIL or FOIA requests, electronic discovery, litigation holds, and discovery searches) for access to Protected Information that is not otherwise authorized under this Agreement. The Contractor will keep OTDA's General Counsel fully and timely notified of all developments related to such legal actions and their response thereto. The notification shall be directed to:

**OTDA General Counsel**  
40 North Pearl Street 16 C  
Albany, NY 12243  
(518) 474-9502  
otda.GC.Notifications@otda.ny.gov

## **11. REPORT OR PUBLICATION**

Contractor will ensure that any study, report, publication, or other disclosure for which Protected Information shared by OTDA is the basis and which is permitted under this Agreement is limited to the reporting of aggregate, de-identified data, which means it will not contain any information that might lead to the identification of a private person or entity. OTDA shall have the right to review and approve any such study, report, publication, or other disclosure prior to disclosure or publication.

## **12. DATA RETENTION**

Notwithstanding any other obligation under this Agreement, Contractor agrees that it will preserve the Protected Information in a manner that complies with all applicable federal, state and local laws, rules, regulations, and policies for the purposes of ensuring applicable data records retention obligations are met.

## **13. COMPLIANCE WITH INFORMATION SECURITY BREACH NOTIFICATION ACT AND OTHER LAWS**

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Protected Information does and will comply with all applicable federal, state and local privacy, confidentiality, security, data protection and compliance laws, rules, regulations, policies, and directives.

Contractor warrants that it will comply with the applicable New York State Information and Security Breach Notification Act and the SHIELD Act (General Business Law Section 899-aa and 899-bb; State Technology Law Section 208). The contractor ensures that it and all Authorized Persons will be in compliance with the aforementioned state, federal, and local laws, rules, regulations, policies, and directives.

## **14. INFORMATION SECURITY INCIDENT AND INFORMATION SECURITY BREACH**

If the Contractor or any Authorized Person becomes aware of or has knowledge of an Information Security Breach (Security Breach), or has reason to believe that Protected Information has been accessed without authorization then the Contractor shall notify the OTDA contact listed below of the Security Incident or Security Breach via the email address noted, and OTDA will direct what further action is necessary for response to the same. At such time, Contractor shall provide OTDA with the name and contact information for an employee of Contractor who shall serve as Contractor's primary security contact and shall be available to assist OTDA 24 hours a day, seven days per week, in keeping OTDA fully and timely notified of all developments relating to any such potential or actual Security Incident or Security Breach utilizing the following contact information:

**OTDA General Counsel**  
40 North Pearl Street 16 C  
Albany, NY 12243  
(518) 474-9502  
otda.GC.Notifications@otda.ny.gov

Should an Information Security Incident or Security Breach occur, immediately following the requisite notification to OTDA,

Contractor shall 1) promptly investigate and utilize best efforts and IT industry best practices to determine the cause(s) of same and devise a proposed resolution and report the cause(s) and suggested remedies to OTDA; (2) promptly implement necessary remedial measures as OTDA deems necessary; (3) document responsive actions taken, including any post-incident review of events and actions taken to make changes in business practices to prevent similar instances in the future; 4) provide reports as requested by OTDA; and 5) promptly notify OTDA of the steps taken to prevent similar instances in the future.

Notification and Assistance to Affected Persons.

Contractor shall be responsible for:

- a. Promptly notifying individuals whose Protected Information was compromised by an Information Security Breach ("Affected Persons"). The contractor is to first seek consultation and receive authorization from OTDA prior to issuing such notifications;
- b. If required by law, provide credit monitoring services, identity theft consultation and restoration, identity theft insurance, public records monitoring, toll free number and call center, payday loan monitoring, and any other services deemed reasonably necessary;
- c. Costs. The Contractor shall bear all costs associated with providing Affected Persons Assistance. OTDA may reduce any Contractor invoice by an amount attributable to the Contractor's failure to satisfactorily provide Affected Persons Assistance.

**15. BUSINESS CONTINUITY AND DISASTER RECOVERY**

The contractor will provide OTDA with a business continuity and disaster recovery plan. This plan will include detailed precautions to minimize the effects of any disaster or interruption of service so that OTDA can rapidly continue to operate and resume mission-critical functions. OTDA will work with the Contractor to provide an analysis of business processes and continuity needs. The contractor will provide technical support staff with the skills required to interface with OTDA's application, network, hardware, and software during planning and preparation for disaster recovery and business continuity testing and/or during any declaration of an actual disaster. Minimum recovery time objective (RTO) and recovery point objective (RPO) will be determined by OTDA.

**16. GENERAL TERMS**

OTDA reserves the right to undertake, without limitation, any other action under the Agreement, or state or federal law, rule, or regulation, to enforce the Agreement and secure satisfactory corrective action and/or return and/or destruction of the Protected Information furnished hereunder, including seeking damages, penalties, and restitution from Contractor or its affiliates as permitted under law.

The Contractor's and Authorized Person's confidentiality and related assurances and obligations hereunder shall survive the termination or expiration of the Agreement.

## Revised Appendix C Offeror's Certified Statements

### Banking Services in Support of Centralized Support Collections and Enforcement IFB #2023-03

(Mandatory Submission: to be completed and included in the Proposal documents)

#### 1. Information with regard to the Offeror

- A. Provide the Offeror's name, address, telephone number, and fax number.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP Code: \_\_\_\_\_

Telephone Number (including area code): \_\_\_\_\_

Fax Number (including area code): \_\_\_\_\_

- B. Provide the name, address, telephone number, and email address of the Offeror's Primary Contact with OTDA with regard to this proposal.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP Code: \_\_\_\_\_

Telephone Number (including area code): \_\_\_\_\_

Email Address: \_\_\_\_\_

- C. Provide the name, address, telephone number, and email address of the person authorized to bind the Offeror contractually, if different from (B).

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP Code: \_\_\_\_\_

Telephone Number (including area code): \_\_\_\_\_

Email Address: \_\_\_\_\_

- D. Provide the name, address, telephone number, email address, place of principal employment and occupation of any person authorized to represent the Offeror. This requirement applies not only to the Offeror's employees involved in the submission of the proposal, but also to every individual or organization employed or designated by the Offeror to attempt to influence the procurement process. If there is no one, state that. This information must be updated if, after the Deadline for Submission of Proposals, the Offeror retains an individual or organization to attempt to influence the procurement process. Indicate also whether the individual or organization has a financial interest in the procurement.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP Code: \_\_\_\_\_

Telephone Number (including area code): \_\_\_\_\_

Email Address: \_\_\_\_\_

Place of Principal Employment: \_\_\_\_\_

Occupation: \_\_\_\_\_

This individual/organization has a financial interest in the procurement: \_\_\_ Yes \_\_\_ No

No such individual/organization is authorized to represent the Offeror: \_\_\_ Yes \_\_\_ No

## 2. Mandatory Requirements to Propose (Section 3.1):

<p>A. The Bidder certifies that is a New York state or federally chartered bank authorized to do business in New York State and must have at least one bank or office with a physical location in New York State. The Contractor must maintain such status and a physical location in the State throughout the term of the Contract.</p>	<p>___ Yes ___ No*</p>
<p>B. The Bidder certifies that it has at least three (3) years' experience providing deposit, disbursement, and cash management services within the past ten years.</p> <p>In each of the three qualifying years, the Bidder must have:</p> <p>(i) at least one contract (specify the years of the contract and the name of the client) under which the Bidder processed at least eight (8) million outgoing ACH transactions per year; and Years _____ Client _____</p> <p>(ii) at least one contract (specify the years of the contract and the name of the client) under which the Bidder processed at least two (2) million Image Cash Letter transactions per year. Years _____ Client _____</p> <p>One contract can be used to meet both the requirements above, in B. (i) and B. (ii).</p>	<p>___ Yes ___ No*</p>
<p>C. The Bidder certifies that it will maintain a Kroll Bond Rating Agency (KBRA) financial rating of at least "B", as published in the most current KBRA report as of the date the Proposal is due as defined in Section 1.0 Calendar of Events of the IFB.</p>	<p>___ Yes ___ No*</p>
<p>D. The Bidder certifies that it is a member of the National Automated Clearing House Association ("Nacha"). The Contractor agrees to comply with all the Nacha Operating Rules ("Nacha Rules" or "The rules and guidelines administered by Nacha that govern the electronic movement of money and data in the United States") throughout the term of the Contract.</p>	<p>___ Yes ___ No*</p>

<p>E. The Bidder certifies that it will be able to act as both an Originating Depository Financial Institution (“ODFI”) and a Receiving Depository Financial Institution (“RDFI”) – able to both initiate and receive ACH entries.</p>	<p>___ Yes ___ No*</p>
<p>F. Sections 105 and 106 of the New York State Finance Law require financial institutions holding deposits of New York State monies to pledge collateral with OSC to the extent deemed appropriate by OSC. As required by such law, the Bidder must agree to pledge securities or to obtain a surety bond by companies with the highest ratings issued by nationally recognized statistical rating organizations to secure the State’s interest in any depository account and any “pass-through” accounts to the extent deemed appropriate by OSC. OSC shall establish and periodically review and adjust, as necessary, the amounts held as collateral. Collateral must be held at the New York State fiscal agent, OSC, for the two accounts with the NYS Tax ID. OSC reserves the right to periodically verify the amount of collateral held.</p>	<p>___ Yes ___ No*</p>

### 3. Offeror’s Acknowledgement of Proposal Requirements

Please note: any alteration of any language contained in this section may render your proposal non-responsive.

<p>G. The proposal, including the Technical, Administrative, and Cost Proposals, constitutes a firm and irrevocable offer for a period of 365 days from the date of submission to OTDA.</p>	<p>___ Yes ___ No*</p>
<p>H. By submission of a proposal, the Offeror agrees not to make any claims for or have any right to any damages because of any misrepresentations or misunderstanding of the specifications or because of lack of information.</p>	<p>___ Yes ___ No*</p>
<p>I. The Offeror attests that its performance of services outlined in this solicitation does not and will not create a conflict of interest with, nor position the Offeror to breach any other Agreement currently in force with the State of New York.</p>	<p>___ Yes ___ No*</p>
<p>J. The Offeror certifies that all information disclosed to the OTDA is complete, true, and accurate with regard to Conflicts of Interest.</p>	<p>___ Yes ___ No*</p>
<p>K. The Offeror certifies that all information disclosed to the OTDA is complete, true, and accurate with regard to investigations or disciplinary actions by the NYS Commission of Public Integrity or its predecessor(s) (collectively, “Commission”).</p>	<p>___ Yes ___ No*</p>
<p>L. The Offeror certifies that all information disclosed to OTDA is complete, true, and accurate with regard to employment of Former State Employees.</p>	<p>___ Yes ___ No*</p>

<p>M. The Offeror certifies that it can and will provide and make available, at a minimum, all services as described in the RFP if selected for award.</p>	<p>___ Yes ___ No*</p>
<p>N. The Offeror certifies that staff provided to perform Services possesses the necessary integrity and professional capacity to meet OTDA’s reasonable expectations. Subsequent to the commencement of Services, whenever the successful Offeror becomes aware, or reasonably should have become aware, that any staff member(s) providing Services to OTDA no longer possesses the necessary integrity or professional capacity, the Offeror agrees to immediately discontinue the use of such staff for Services under Contract and notify OTDA of such occurrence.</p>	<p>___ Yes ___ No*</p>
<p>O. The successful Offeror agrees to undertake a background investigation of any new staff during the term of the Agreement resulting from this RFP.</p>	<p>___ Yes ___ No*</p>
<p>P. The Offeror certifies that it will maintain records related to the background investigations performed for the term of the Agreement resulting from this RFP.</p>	<p>___ Yes ___ No*</p>
<p>Q. The Offeror certifies that all information provided in connection with its proposal is true and accurate.</p>	<p>___ Yes ___ No*</p>
<p>R. The Offeror has read, understands, and accepts all provisions of Appendix A – Standard Clauses for NYS Contracts. Appendix A contains important information related to the contract to be entered into as a result of this RFP and will be incorporated, without change or amendment, into the contract entered into between OTDA and the selected Offeror. By submitting a response to the RFP, the Offeror agrees to comply with all the provisions of Appendix A.</p>	<p>___ Yes ___ No*</p>
<p>S. The Offeror’s legal representation has reviewed and understands Appendix T (Draft Agreement), and the Offeror is willing to enter into an Agreement substantially in accord with the terms of Appendix T (Draft Agreement), as amended by Q&amp;A #1.</p>	<p>___ Yes ___ No*</p>
<p>T. The Offeror agrees that OTDA shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractor(s) of the Offeror prior to their performance of services under the Agreement.</p>	<p>___ Yes ___ No*</p>
<p>U. The Offeror agrees that it shall be fully responsible for performance of work by its staff and by the subcontractor’s staff. OTDA reserves the right to request removal of any Offeror staff or subcontractor’s staff from working on OTDA’s contract if, at OTDA’s discretion, such staff is not performing in accordance with the Agreement.</p>	<p>___ Yes ___ No*</p>

\* A "No" response in Sections 2 or 3 of this Appendix will result in disqualification.

**4. Information Required:**

A. The Offeror is (check as applicable):

- A New York State Certified Minority-Owned Business Enterprise
- A New York State Certified Woman-Owned Business Enterprise
- A New York State Certified Minority- and Woman-Owned Business Enterprise (Dual Certified)
- A New York State Certified Service-Disabled Veteran-Owned Business Enterprise
- None of the above

B. Provide the name, title, address, telephone number, and email address of the person authorized to receive Notices with regard to the Contract entered into as a result of this procurement. See Article 6 of the Draft Agreement (Appendix T), Notices.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP Code: \_\_\_\_\_

Telephone Number (including area code): \_\_\_\_\_

Email Address: \_\_\_\_\_

C. Offeror's Taxpayer Identification Number: \_\_\_\_\_

D. Offeror's NYS Vendor Identification Number: \_\_\_\_\_

**By my signature on this Appendix C, I certify that I am authorized to bind the Offeror contractually.**

\_\_\_\_\_  
Typed or Printed Name of Authorized Representative of the Offeror

\_\_\_\_\_  
Title/Position of Authorized Representative of the Offeror

\_\_\_\_\_  
Signature of Authorized Representative of the Offeror

\_\_\_\_\_  
Date

## CUSTOMER RECONCILIATION REPORT

TYPE OF REPORT		DIV. NO	CUS. A/C NO	CUSTOMER NAME	DATE	PAGE
		487				1

C O D E	CHECK NUMBER	CHECK AMOUNT PAID O/S	DATE PAID	REFERENCE NUMBER	DATE ISSUED	DESCRIPTION COMMENTS	C O D E	CHECK NUMBER	CHECK AMOUNT PAID O/S	DATE PAID	REFERENCE NUMBER	DATE ISSUED	DESCRIPTION COMMENTS
4		97.00	071520				4		40.25	121422		061422	
4		294.00	080922		020722		4		1.00	121922		061722	
4		10.00	081922		021722		4		16.00	122222		062222	
4		2.58	082622		022422		4		40.00	122222		062222	
4		297.00	082922		022522		4		10.42	122322		062322	
4		83.00	091222		031122		4		153.24	071522		062422	
4		222.00	091322		031422		4		53.50	010423		070522	
4		271.00	091622		031722		4		19.00	010423		070522	
4		7.50	091622		031722		4		30.07	010523		070622	
4		83.00	092022		032122		4		56.50	010523		070622	
4		50.00	092722		032822		4		192.39	010623		070722	
4		33.39	092722		032822		4		41.00	010923		070822	
4		360.00	092722		032822		4		41.00	012323		072222	
4		51.90	100522		040522		4		117.34	012423		072522	
4		24.00	101122		041122		4		10.80	013023		073122	
4		8.65	101122		041122		4		122.00	020323		080422	
4		8.64	101122		041122		4		78.94	020323		080422	
4		116.77	101322		041322		4		22.54	020723		080822	
4		69.00	101322		041322		4		1.84	020723		080822	
4		8.65	101822		041822		4		12.46	021023		081122	
4		8.57	101822		041822		4		44.18	021323		081222	
4		537.93	101922		041922		4		106.66	021523		081622	
4		9.00	101922		041922		4		50.00	022723		082622	
4		7.70	103122		043022		4		108.34	030823		090622	
4		5.22	103122		043022		4		12.50	030923		090722	
4		1.07	103122		043022		4		44.18	031323		090922	
4		125.00	103122		043022		4		187.50	110122		091622	
4		42.50	103122		043022		4		38.98	032023		091622	
4		2.00	103122		043022		4		87.00	032023		091622	
4		32.54	110122		050222		4		25.67	032123		091922	
4		137.14	110222		050322		4		150.00	032723		092322	
4		12.50	110222		050322		4		94.00	032823		092622	
4		23.07	110722		050622		4		100.00	032923		092722	
4		9.00	110722		050622		4		150.00	040323		093022	
4		8.65	110822		050922		4		150.00	040423		100322	
4		12.26	110922		051022		4		24.00	040423		100322	
4		50.00	111422		051222		4		6.00	040523		100422	
4		50.00	111522		051622		4		93.56	040523		100422	
4		8.65	111522		051622		4		667.25	041023		100722	
4		17.00	111622		051722		4		44.18	041023		100722	
4		64.31	111722		051822		4		63.00	041323		101222	
4		41.00	112122		052022		4		1.46	041323		101222	
4		12.50	112322		052422		4		1.80	041723		101422	
4		4.00	112822		052722		4		44.18	041723		101422	
4		8.76	120222		060222		4		2.00	041923		101822	
4		362.34	120222		060222		4		9.58	042423		102122	
4		8.76	120522		060322		4		166.50	042423		102122	
4		10.50	120722		060722		4		12.50	042823		102722	
4		44.18	121222		061022		4		143.45	050323		110122	
4		25.87	121422		061422		4		5.76	050323		110122	

<p style="text-align: center;">TYPE OF REPORT</p> <p>UNPAID ONLY - OUTSTANDING ITEMS ONLY ON THIS REPORT.          PAID ONLY - PAID ITEMS ONLY ON THIS REPORT.          CONSOLIDATED - PAID &amp; OUTSTANDING CHECKS ON SAME REPORT.</p>	<p style="text-align: center;">EXPLANATION OF CODES</p> <p>1. CHECK PAID THIS PERIOD; NO OUTSTANDING ISSUE RECEIVED.          2. CURRENT ITEM CANCELLED THIS PERIOD.          3. CHECK PAID PREVIOUS PERIOD; OUTSTANDING ISSUE STILL NOT RECEIVED. MEMO ONLY; NOT ADD INTO TOTALS.          4. STOP PAYMENT IN EFFECT; CHECK HAS NOT BEEN PRESENTED.</p>	<p style="text-align: center;">RECEIVED. MEMO ONLY, NOT ADDED INTO TOTALS.</p> <p>9. 1 YEAR RECORD RETENTION EXPIRED.</p> <p>*** (RANGE ACCOUNT ONLY) CHECKS OUTSTANDING FOR THIS PERIOD.</p>
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## CUSTOMER RECONCILIATION REPORT

TYPE OF REPORT													
[REDACTED]		DIV. NO	CUS. A/C NO	CUSTOMER NAME				DATE	PAGE				
[REDACTED]		487	[REDACTED]	[REDACTED]				[REDACTED]	[REDACTED]				
C O D E	CHECK NUMBER	CHECK AMOUNT PAID O/S	DATE PAID	REFERENCE NUMBER	DATE ISSUED	DESCRIPTION COMMENTS	C O D E	CHECK NUMBER	CHECK AMOUNT PAID O/S	DATE PAID	REFERENCE NUMBER	DATE ISSUED	DESCRIPTION COMMENTS
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4	[REDACTED]	12.50	050923		110722	[REDACTED]							
4	[REDACTED]	3.49	050923		110722	[REDACTED]							
4	[REDACTED]	33.00	051023		110822	[REDACTED]							
4	[REDACTED]	5.80	051023		110822	[REDACTED]							
4	[REDACTED]	3.36	051023		110822	[REDACTED]							
4	[REDACTED]	38.75	051123		110922	[REDACTED]							
4	[REDACTED]	44.18	051623		111422	[REDACTED]							
4	[REDACTED]	15.76	051823		111622	[REDACTED]							
4	[REDACTED]	24.36	052223		111822	[REDACTED]							
4	[REDACTED]	87.16	053123		112922	[REDACTED]							
4	[REDACTED]	344.50	060223		120122	[REDACTED]							
4	[REDACTED]	39.55	060723		120622	[REDACTED]							
4	[REDACTED]	12.50	060723		120622	[REDACTED]							
4	[REDACTED]	55.50	060823		120722	[REDACTED]							
4	[REDACTED]	88.00	060823		120722	[REDACTED]							
4	[REDACTED]	64.50	062823		122722	[REDACTED]							
4	[REDACTED]	102.00	070323		123122	[REDACTED]							
4	[REDACTED]	55.50	070623		010423	[REDACTED]							
4	[REDACTED]	25.00	070623		010423	[REDACTED]							
4	[REDACTED]	13.36	070623		010423	[REDACTED]							
4	[REDACTED]	418.00	071223		011023	[REDACTED]							
4	[REDACTED]	1.93	071723		011323	[REDACTED]							
4	[REDACTED]	40.00	071723		011323	[REDACTED]							
4	[REDACTED]	22.62	072023		011823	[REDACTED]							
4	[REDACTED]	10.56	072023		011823	[REDACTED]							
4	[REDACTED]	9.74	072423		012023	[REDACTED]							
TOTAL		9,443.94	128GT										

**TYPE OF REPORT**

UNPAID ONLY - OUTSTANDING ITEMS ONLY ON THIS REPORT.  
 PAID ONLY - PAID ITEMS ONLY ON THIS REPORT.  
 CONSOLIDATED - PAID & OUTSTANDING CHECKS ON SAME REPORT.

**EXPLANATION OF CODES**

- |   |  |   |
|---|--|---|
| <ol style="list-style-type: none"> <li>1. CHECK PAID THIS PERIOD; NO OUTSTANDING ISSUE RECEIVED.</li> <li>2. CURRENT ITEM CANCELLED THIS PERIOD.</li> <li>3. CHECK PAID PREVIOUS PERIOD; OUTSTANDING ISSUE STILL NOT RECEIVED. MEMO ONLY; NOT ADD INTO TOTALS.</li> <li>4. STOP PAYMENT IN EFFECT; CHECK HAS NOT BEEN PRESENTED.</li> </ol> | <ol style="list-style-type: none"> <li>5. STOP PAYMENT IN EFFECT; CHECK PRESENTED AND RETURNED.</li> <li>6. FORCED ITEM DUPLICATED.</li> <li>7. CURRENT ITEM CANCELLED; NO OUTSTANDING ISSUE RECEIVED.</li> <li>8. CANCELLED PREVIOUS PERIOD. OUTSTANDING ISSUE STILL NOT</li> </ol> | <ol style="list-style-type: none"> <li>9. 1 YEAR RECORD RETENTION EXPIRED.</li> <li>*** (RANGE ACCOUNT ONLY) CHECKS OUTSTANDING FOR THIS PERIOD.</li> </ol> |
|---|--|---|