



MARTIN O'MALLEY  
Governor

ANTHONY BROWN  
Lieutenant Governor

T. ELOISE FOSTER  
Secretary

DAVID C. ROMANS  
Deputy Secretary

**Amendment #5 to  
Request for Proposals (RFP)  
Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs)-  
Healthcare and Dependent Care  
Project No. F10B9200027  
September 25, 2009**

Ladies and Gentlemen:

This Amendment is being issued to amend and clarify certain information contained in the above named RFP. All information contained herein is binding on all Offerors who respond to this RFP. Specific parts of the RFP have been amended. The following revisions /deletions / additions are listed below; new language has been double underlined and marked in bold (ex. **new language**) and language deleted has been marked with a strikethrough (ex. ~~language deleted~~).

1. Amend the RFP, section 1.30, Electronic File Transfer:

All electronic file transfers between the Department of Budget and Management and the Contractor shall be exchanged using a point-to-point Virtual Private Network (VPN) **or secure FTP** connection approved by the State of Maryland, Department of Budget and Management and the Department of Information Technology (DOIT). Policies and procedures concerning use of this network are located at [www.doit.maryland.gov](http://www.doit.maryland.gov). **Specifically address your ability to provide either or both secured means of data exchange in confirming your agreement to this item. In framing your response, please note the requirements of the federal Department of Health and Human Services in connection with HIPAA Security Rule and HI-TECH Act compliance (see <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/breachnotificationifr.html> and <http://edocket.access.gpo.gov/2009/pdf/E9-20169.pdf>). See also RFP §3.2.5. Address how your capability to transmit and exchange information is sufficiently secure under the HIPAA and HI-TECH requirements.**

2. Amend the RFP to add section 1.33, Electronic Procurements Authorized:

**1.33 Electronic Procurements Authorized**

**1.33.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department of Budget & Management (DBM) may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a**

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contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

1.33.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the RFP or the Contract.

1.33.3“Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.

1.33.4 In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g. §1.30 related to EFT) and subject to the exclusions noted in section 5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

A. The Procurement Officer may conduct the procurement using eMarylandMarketplace, e-mail or facsimile to issue:

- (i) the solicitation (e.g. the RFP);
- (ii) any amendments;
- (iii) pre-proposal conference documents;
- (iv) questions and responses;
- (v) communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
- (vi) notices of award selection or non-selection; and
- (vii) the Procurement Officer's decision on any protest or Contract claim.

B. An Offeror or potential Offeror may use e-mail or facsimile to:

- (i) ask questions regarding the solicitation;
- (ii) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
- (iii) request a debriefing; or,
- (iv) submit a "No Bid Response" to the solicitation.

C. The Procurement Officer, the State's Contract Manager and the Contractor may conduct day-to-day Contract administration, except as outlined in section 5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.

1.33.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

A. submission of initial bids or proposals;

**B. filing of protests;**

**C. filing of Contract claims;**

**D. submission of documents determined by DBM to require original signatures (e.g. Contract execution, Contract modifications, etc); or**

**E. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.**

**1.33.6 Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RPF, the Contract, or in the direction from the Procurement Officer or Contract Manager.**

3. Amend the Attachment A to the RFP to revise Section 5.1 of the Contract:

#### **Rights to Records**

**5.1** The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. **Nothing in this Article 5 shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to its methodologies, methods of analysis, ideas, know-how, methods, techniques and skills possessed prior to this Contract.**

4. Amend Attachment G-5, Compliance Checklist CC-28: (See Revised Attachment G-5):

CC-28 Offeror will provide at least 6 months notice of any **Offeror initiated** major planned systems upgrades or changes (to include claims, customer service, eligibility, corporate operating system).

5. Amend Attachment G-5, Compliance Checklist CC-37: (See Revised Attachment G-5):

~~CC-37 Offeror agrees to prepare and file all legal documents necessary to implement and maintain the plan, including policies, amendments, contracts, required state filings, and development of booklet/certificate formats.~~

**CC-37 Upon request of the State, Offeror agrees to draft or otherwise provide such filings, contracts, policies, amendments, required state/government filings, and booklet/certificate formats and Offeror agrees to submit (physically delivering or arranging delivery) the forms/filings on behalf of the State. Such filings/forms will accurately identify the plan sponsor and the nature of the FSA plans.**

6. Amend Attachment G-5, Compliance Checklist CC-44: (See Revised Attachment G-5):

CC-44 All electronic file transfers between the Department of Budget and Management and the Offeror shall be exchanged using a point-to-point Virtual Private Network (VPN) or a **secure**

FTP connection approved by the State of Maryland, Department of Budget and Management and the Department of Information Technology (DOIT).

7. Amend Attachment G-5, Compliance Checklist CC-45: (See Revised Attachment G-5):

CC-45 Offeror agrees to perform draft and submit, on behalf of the State, any periodic federal government filings and amendments as required by law, in connection with the FSA plans. Such services shall be upon the State's request during the contract term.

8. Amend RFP to add Attachment K, Enrollment File Layout: (See Attachment K). Please note that this is the enrollment file lay-out currently used by the Department to electronically transmit enrollment data as described in the RFP §3.2.4 and G-5, CC-27. This format applies to the electronic enrollment data only. Please see RFP Attachment J for information related to deduction reports that are also transmitted.

9. Amend RFP § 3.2.5 to add section D as follows:

**D. The Contractor shall comply with the regulations and guidance issued by the federal Department of Health and Human Services on or about August 24, 2009 (74 Federal Register 42740 (08/24/09), available on-line at <http://www.gpoaccess.gov/fr/index.html>), and any future regulations issued by the federal Department of Health and Human Services pursuant to the HI-TECH Act, in complying with the HIPAA privacy and security provisions of the RFP and the Contract. The term “unsecured protected health information” or “unsecured PHI” shall be interpreted and applied consistent with such regulations.**

10. Amend RFP Attachment G-5, cc-22 and cc-23 as follows:

HIPAA		
CC-22	h.). Provide, or pay to provide, notice to affected individuals in the form, content, manner, method, and timing to meet the requirements of the HI TECH Act, §§13400-13402 <b><u>and the regulations issued by the Department of Health and Human Services</u></b> , in the event of a breach of unsecured PHI. <b><u>Such notices to individuals shall be on behalf of the FSA plan(s) and subject to prior review and approval by the State.</u></b>	
CC-23	b.) Offeror shall implement and use appropriate and reasonable administrative, physical and technical safeguards to prevent Use or Disclosure of PHI other than (1) as provided in this RFP and the contract, (2) permitted by the HIPAA Privacy Regulation for a Covered Entity, and (3) permitted by the Medical Records Act. In the event that the HIPAA Privacy Regulation and the Medical Records Act conflict regarding the degree of protection provided for PHI, the Offeror shall comply with the more restrictive protection requirements. <b><u>To the extent that the Offeror does not receive, retain, maintain or create medical records as defined by the Medical Records Act, the provisions of the Medical Records Act will not apply.</u></b>	

	<p>g.) Offeror shall provide a Notice of Privacy Practices to all individuals enrolled in the health FSA plan in compliance with 45 CFR §164.520 as if the Offeror were the Covered Entity with regard to the health FSA plan.</p> <p><del>(1) This Notice of Privacy Practices shall comply with the requirements of 45 CFR §164.520 as if the Offeror were the Covered Entity with regard to the health FSA plan.</del></p> <p><del>(2) A copy of this Notice of Privacy Practices shall be provided to the State with certification that the notice has been provided to the Participants. <b><u>Offeror shall operate in connection with PHI in a manner that is consistent with the Notice of Privacy Practices issued by the Department.</u></b></del></p>	
	<p>i.) Offeror shall accommodate reasonable requests by individuals enrolled in the health FSA plan or by the State on behalf of such individuals to receive confidential communications in compliance with 45 CFR §164.522(b)(ii) <b><u>and the HI-TECH Act §13405</u></b> as if the Offeror were the Covered Entity with regard to the health FSA plan. The Offeror may condition providing confidential communications as permitted by 45 CFR §164.522(b)(2).</p>	
	<p>q.) Offeror may Use and Disclose PHI in order to provide the services required by the Offeror in the administration of the health FSA plan provided that (a) such Use and Disclosure complies with the HIPAA Privacy Regulation as if the Offeror were the Covered Entity with regard to the health FSA plan, (b) such Use or Disclosure is permitted by the Medical Records Act, and (c) such Use or Disclosure is consistent with the Offeror's notice of privacy practices. In the event that a HIPAA Privacy Regulation and the Medical Records Act conflict regarding the degree of protection provided for PHI <b><u>(or medical records as applicable)</u></b>, the Offeror shall comply with the more restrictive protection requirement.</p>	

Please acknowledge this Amendment #5 with a response to the new RFP § 1.30, §1.33, and §3.2.5D through email with a follow up in hardcopy to my attention by September 30, 2009. In responding to this Amendment #5, complete the revised Attachment #5, Compliance Checklist CC-22,CC-23,CC-28,CC-37,CC-44, and CC-45 found in Attachment #1 to this Amendment, and state your acceptance or disagreement with explanation.

Date issued: September 25, 2009

Sincerely,

Joy Epstein  
Procurement Officer

## Attachment K

**FLXBNKEY**

**FILE NAME:** FSA.text

**DATE:** March 1, 2007  
**Production stated** 07/02/2007

**FILE ORGANIZATION:**

**STORAGE MEDIUM:** Text file

**RECORD SIZE:** 200

**RECORD FORMAT:**Fixed

<i>POSITIONS</i>	<i>SIZE</i>	<i>CLASS</i>	<i>DESCRIPTION</i>	<i>DATA</i>
1-9	9	A/N	Social Security No.	
10-11	2	A/N	Filler	
12-26	15	A/N	Last Name	
27-41	15	A/N	First Name	
42	1	A/N	Middle Initial	
43-48	6	A/N	Filler	
49-78	30	A/N	Address1	
79-108	30	A/N	Address2	
109-123	15	A/N	City	
124-125	2	A/N	State	
126-130	5	A/N	Zip Code	
131-134	4	A/N	Filler	
135	1	A/N	Pay Center	C, U, S, N, R or D
136	1	A/N	Pay Cycle	B,M or F
137	1	A/N	Sex	M or F
138	1	A/N	Marital Status	S,M,W,D or L
139	1	A/N	Transaction Code - HC	Space = Full File, 1 =New, 2 =Change, 3 =Cancel
140-147	8	A/N	Effective date – HC	CCYYMMDD
148-156	9	N	HC Deduction	9(7)V99
157-160	4	A/N	Filler	
161	1	A/N	Transaction Code - DC	Space = Full File, 1 =New, 2 =Change, 3 =Cancel
162-169	8	A/N	Effective date – DC	CCYYMMDD
170-178	9	N	DC Deduction	9(7)V99
179-180	2	A/N	Filler	
181-186	6	A/N	Agency	
187-188	2	A/N	Filler	
189-196	8	N	Birth Date	CCYYMMDD
197-200	4	A/N	Filler	