



**NYSIF REQUEST FOR COMMENT
OUT OF STATE COVERAGE PROGRAM
RFC # 2021-69-INS**

1. OVERVIEW OF THE NEW YORK STATE INSURANCE FUND

NYSIF (The New York State Insurance Fund) was established in 1914 as part of the original enactment of the New York State Workers' Compensation Law. NYSIF's mission is to guarantee the availability of workers' compensation insurance at the lowest possible cost to all New York employers and to foster healthy outcomes with timely, appropriate indemnity and medical payments to injured workers, while maintaining a solvent fund. For more than a century, NYSIF has fulfilled the dual roles for which it was created: to compete with other carriers to ensure a fair marketplace and to be a guaranteed source of coverage for employers who cannot secure coverage elsewhere.

NYSIF is the largest workers' compensation carrier in New York State and among the 10 largest in the nation, insuring more than 145,000 policyholders with over \$1.4 billion in annual premium and \$20 billion in assets. A self-supporting insurance carrier, NYSIF operates without taxpayer funding.

In addition to workers' compensation insurance, NYSIF provides disability benefits coverage for off-the-job injuries to more than 65,000 New York employers. In 2018, NYSIF added Paid Family Leave as a component of its disability benefits solution providing New Yorkers with job-protected paid time away from work to care for their families.

2. TO PROSPECTIVE BIDDERS

NYSIF is issuing this Request for Comment (RFC) to solicit commentary from vendors on specific sections of a draft Solicitation for the Initiative described below.

Vendors interested in participating in any possible future opportunities are encouraged to respond to this RFC. Further information may be found on [NYSIF's website](#).

3. PURPOSE OF THIS REQUEST FOR COMMENT (RFC)

It is the objective of this RFC to obtain vendor feedback on all requirements, terms and conditions presented in the draft Solicitation excerpts for this Out of State Coverage Program RFP (Attachment 1). Further, only comments specifically and explicitly related to the draft Solicitation content will be considered. Any collateral material such as brochures and marketing material submitted in a response will not be considered.

There will not be a contract award for purchase of services or products directly resulting from this RFC. NYSIF will use the feedback received from this RFC as potential input to finalize overall requirements. The scope of the draft Solicitation could change based on comments received. Respondents will be placed on a mailing list and will receive an announcement of any subsequent Request for Proposals (RFP) that may arise from the RFC.

Any decision to subsequently issue an RFP for such services will be at the sole discretion of NYSIF, and NYSIF is under no obligation to initiate such an RFP.

4. SUMMARY OF NYSIF'S POLICY AND PROHIBITIONS REGARDING PERMISSIBLE CONTACTS DURING A COVERED PROCUREMENT

Pursuant to State Finance Law §§139-j and 139-k, this RFC includes and imposes certain restrictions on communications between a Governmental Entity and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit bids through final award and approval of the Procurement Contract by the Governmental Entity and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3)(a). Designated staff, as of the date hereof, is identified in section 7 of this RFC. NYSIF employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements is available from the designated contact(s).

5. GENERAL TERMS AND CONDITIONS

Proprietary Information - Careful consideration should be given before confidential information is submitted as part of your response. Review should include whether it is critical for reviewing a response and whether general, non-confidential information may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers Law, Section 87(2)(d) provides exceptions to disclosure for records or portions thereof. Among these "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."

A respondent to the RFC who is taking advantage of this provision must clearly identify on each page of the submission that contains confidential or proprietary information the label "Confidential" or "Proprietary" and the identification of the page and section for which the exemption is requested. In addition, with regard to any particular section(s) for which an exemption is requested, pursuant to POL 89[5] the respondent must provide a written request to exempt the information from disclosure, including a written basis of the reasons why the information should be exempted by identifying: (i) why the disclosure of the identified information would cause substantial injury to the competitive position of the Contractor, or (ii) why the information constitutes critical infrastructure information which should be exempted from disclosure pursuant to §87(2) of the Public Officers Law. The written request and rationale can be by a separate document which refers to the specific page(s) and section(s) of the submission to which it refers.

Requests for exemption of the entire contents of a submission from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of the firm or information which constitutes critical infrastructure information which may be exempted from disclosure pursuant to §87(2) of the Public Officers Law.

NYSIF cannot guarantee the confidentiality of any information submitted.

NYSIF reserves the right to:

A. Use any and all ideas submitted in response to the RFC.

- B. Adopt all or any part of the vendor's response in selecting the optimum configuration to be used in an RFP.
- C. Request RFC respondents to present supplemental information clarifying their responses, either in writing, in formal presentation, or by product demonstrations.
- D. Accept or reject any or all information received, or to modify or cancel this RFC in part or in its entirety at any time.
- E. NYSIF recognizes that information and cost figures provided in response to this RFC are nonbinding.
- F. This RFC is being issued for to obtain vendor feedback on all requirements, terms and conditions presented in the draft Solicitation. This RFC is not a contract offer, and does not commit NYSIF to award a contract, pay any costs incurred by Respondent in preparing a response, or to procure or contract for services or supplies. No contract can or will be awarded based on submissions.
- G. Respondents are encouraged to respond to this RFC; however, failure to submit a response will not impact a respondents' ability to respond to any future competitive solicitation process (if any) for projects.
- H. There are no representations or warranties regarding the accuracy or completeness of the information contained in this RFC. Respondents are responsible for making their own evaluation of information and data contained in this RFC and for preparing and submitting responses to this RFC.

6. **CALENDAR**

<u>DATE</u>	<u>EVENT</u>	<u>COMMENTS</u>
10/8/2021	RFC Issued	
10/25/2021 2:00 PM EST	Final date for submission of responses	Deadline for response to this RFC. Responses should be emailed to contracts@nysif.com . Please include "NYSIF RFC #2021-69-INS" in the subject line of the e-mail.

7. **INQUIRIES/ISSUING OFFICE/DESIGNATED CONTACT**

All inquiries concerning this RFC will be addressed to the following Designated Contacts:

Megan McClune
Contract Management Specialist
E-Mail: contracts@nysif.com

Jessica Alber
Contract Management Specialist
E-Mail: contracts@nysif.com

All amendments, clarifications and any announcements related to this RFC will be posted on [NYSIF's website](#). It is the sole responsibility of the respondents to check the website for any amendments, clarifications or updates. All applicable amendment information must be incorporated into the firm's response.

8. REQUESTED INFORMATION

The objective of this RFC to obtain vendor feedback on all requirements, terms and conditions presented in the draft Solicitation excerpts for this Out of State Coverage Program RFP (Attachment 1). In addition to providing comments on Attachment 1 below, Respondents should address the following:

- A. Provide details of the methodology for termination of OSC policy's, whether at expiration or mid-term, including such instances as non-payment of premium.
- B. Please outline the process for claims management upon contract termination including: commutation options, run off of claims, etc.
- C. Please provide samples of reports currently utilized with clients involved in similar arrangements. Sample reports should include, but not be limited to, the following, and identify the frequency of each report:
 - Premium and policy reports (monthly bordereau or similar)
 - Claim payments
 - Case reserve
 - Billing & payment report

9. PRESENTATION/INTERVIEW

NYSIF, at its own discretion, may ask respondents to give a presentation/interview. If NYSIF conducts presentations/interviews as part of the information gathering process, NYSIF's review committee may use the information gathered during this process to develop RFP specifications. Presentations may be up to 90 minutes. Questions may be asked by the review committee based on material covered in the presentation/interview.

Presentation/interviews will be conducted in New York City or Albany. It will be the responsibility of the respondents to present the appropriate staff to discuss the products, at the scheduled time. Respondents will be responsible for any and all costs associated with the presentation. Appointments will be made at least one week prior to the scheduled presentation/interview date. There is no guarantee expressed or implied that a firm will be asked to make a presentation and no product or services will be procured through this process. NYSIF reserves the right to conduct interviews using remote video conferencing.

10. DUE DATE

The due date for responses is 10/25/2021, 2:00 p.m. (Eastern) to: contracts@nysif.com. Please include "Response to NYSIF RFC #2021-69-INS" in the subject line of the e-mail. Responders assume all risks for timely, properly submitted deliveries.

ATTACHMENT 1 – TECHNICAL SPECIFICATIONS

1. PURPOSE OF THE RFP

NYSIF is seeking proposals from qualified firms including, but not limited to, brokers/intermediaries that have demonstrated experience with, and success in, providing a workers' compensation insurance product and services under Other States Coverage (hereinafter "OSC") Programs of state-run insurers or analogous program operations.

Under Section 76 of NYS Workers Compensation Law, NYSIF's purpose has been enlarged to permit NYSIF to enter into agreements with insurers licensed to write workers' compensation insurance in states outside New York to issue policies to NYSIF's policyholders covering those policyholders' obligations to secure the payment of workers' compensation benefits under the laws of states other than New York.

For a policyholder to be eligible for insurance in states other than New York, provided through the contract resulting from this RFP, the policyholder must meet one of the following:

- (i) the policyholder's workers' compensation premiums with NYSIF covering its employees under this chapter must be greater than the premiums charged to cover the policyholder's obligations to pay workers' compensation benefits in all states, in the aggregate, other than New York when covered under such agreements; or
- (ii) the payroll for the policy holder's operations in New York must be greater than the policy holder's payroll in all states, in the aggregate, other than New York when covered under such agreements for the prior policy period.

For determining eligibility, "premiums" mean estimated premiums as determined by NYSIF at the beginning of the policy period. In addition, for a policyholder to be eligible for insurance in states other than New York through NYSIF, the policyholder must meet NYSIF's underwriting criteria for other states coverage as specified by rules of the commissioners.

2. MANDATORY REQUIREMENTS

Bidders proposals must demonstrate how each of the following mandatory requirements are met AND/OR attest to their ability to meet the mandatory requirement.

- 1. The Bidder must have at least three (3) years' experience with proven capability in the Out of State Coverage market.
- 2. Broker/Intermediary Bidders for the Out of State Coverage must have an established relationship with a reputable Fronting Insurance Firm(s).
- 3. The Bidder's Fronting Insurance Firm must be in compliance with all state and federal laws in the locale where services are being provided. This includes any and all licensing and/or certifications required under the State where the Bidder is providing services.
- 4. The Bidder's Fronting Insurance Firm must have the ability to write policies for all States, exclusive of the Monopolistic states.
- 5. The Bidder and/or the Fronting Insurance Firm must have a minimum of two (2) writing tiers in all applicable markets which provide premium pricing flexibility.
- 6. NYSIF expects that the Bidder employ information-security best practices in maintaining the confidentiality, integrity, and availability of its information technology infrastructure and information entrusted to it by NYSIF against compromise or misuse by internal or external malicious users. The Bidder shall use encryption on all links that are routed

through public networks – current practice requires PGP encryption and SFTP. Under no circumstances will secure information be sent via electronic mail. The Bidder shall perform periodic information-security system checks/tests and generate activity reports, as requested by NYSIF.

7. The Bidder must develop and maintain a detailed project plan. As the project progresses, the NYSIF project manager and the Bidder's project manager will work together to make any adjustments to the plan. The Bidder's project plan must include the following detail – activities, sub-activities, tasks, estimated hours of work, resources, schedule start and end dates, dependencies in the relationships of tasks and critical path. Associated roles and responsibilities should be outlined for each task.
8. The Bidder must work with the NYSIF project manager to implement a risk management process to ensure that risks are identified, assessed and prioritized and that mitigation activities and contingency plans are developed to address significant risks.
9. The Bidder must provide any technical training and involve the NYSIF technical staff in development discussions as needed.
10. At the end of contract, the bidder will fully cooperate with successor firm to ensure transition of services, including but not limited to providing any required:
 - A. Testing
 - B. Data Transfer
 - C. Reporting
 - D. Audit Compliance

3. SERVICES TO BE PROVIDED

1. Bidder must have a high level familiarity of the New York State Workers' Compensation marketplace and specifically the operations of NYSIF as an insurance carrier. This is to include an understanding of obligations undertaken when a NYSIF policyholder assumes non-New York State workers' compensation exposure.
2. Details of the product(s) to be offered which will satisfy all obligations incurred by NYSIF Policyholders who assume extraterritorial exposure (outside the jurisdiction of New York State Workers' Compensation law.)
3. Knowledge of all Loss Prevention / Loss Control services as required by state law or regulation within all non-monopolistic states and ability to assist with securing (or directly offering) statutorily obliged services.
4. Multiple writing tiers in all applicable markets which provide premium pricing flexibility.
5. Bidder must provide details of the fronting carrier's non-compete agreement under the OSC program, including a method that will allow NYSIF to confirm whether a prospective OSC customer has already initiated a quote request (or has a policy in effect) with the Fronting carrier at the time of our insured's request for a NYSIF OSC quote.
6. A professional and competent system of accident/injury investigation and case management, including loss mitigation strategies and the requisite level of legal

representation necessary to protect the interests of NYSIF and its covered employers.

7. Utilization of and proficiency with an established Claims Management System with access granted to NYSIF's employees, and/ or their representatives, at a level that would allow for the appropriate audit/ review of individual claims. Said access would allow for the review of: claim documents, summaries, diaries, notes, payment information, reserves, hearing reports, investigative reports, IMEs, etc.
8. High level proficiency in the proper handling of Claims in all jurisdictions other than monopolistic state fund states. This proficiency should include availability, utilization, and details of rates/costs for a robust set of Claims handling resources, including but not limited to:
 - Independent Medical Examination (IME) Services
 - Investigative Services
 - Pharmacy Benefit Manager (PBM)
 - Diagnostic Testing Network (DTN)
 - Center for Medicare & Medicaid Services Medicare Set Aside Vendor (CMS MSA)
 - Legal Outside Counsel
 - Preferred Provider Organization (PPO)
 - Medical Bill Cost Savings Program
9. Reporting systems that have the capability of securely interfacing with those of NYSIF wherever possible in areas of policy and premium production, auditing and collection, claims handling, and required financial interactions with NYSIF including: payroll, claims payments, case reserves, etc.
10. Data reporting as required by state and or Federal laws and regulations to include, but not be limited to: policy, unit statistical, financial calls and any other required reporting.
11. Services and administration that support: out of state underwriting, rating, policy issuance, finance, audit, and document production. Successful bidder will Include detailed workflows including details of NYSIF's methods of utilization (and training) for the following services:
 - Quote processing
 - Policy issuance for new and renewal business
 - Policy change and endorsement processing including cancellation and reinstatement
 - Provisions for Certificates of Insurance
 - Coordination with NYSIF for premium invoicing
 - Coordination with NYSIF for auditing
 - Proof of coverage filings as required by state regulation
 - Claim payment and claim reserve reporting to NYSIF
 - Report generation (loss runs)
12. Details of all deductible and return of premium plans available.
13. Details of implementation of OSC for NYSIF policyholders utilizing a TPA (Third Party Administrator).
14. Detailed implementation plan / timeline for roll out of proposed OSC program

including substantial milestones.

15. Explanation of aggregate OSC program reporting and dashboard availability.
16. The Bidder and/or the Fronting Insurance Company must comply with all state regulatory and statutory requirements including, but not limited to, reporting requirements unique to each state. Note, if the Bidder or the Fronting Insurance company are charged penalty fees due to their failure to remain within compliance, any and all penalty fees will be the responsibility of the Bidder and/or Fronting Insurance Company and cannot be billed back to NYSIF.
17. Bidder must comply with the more stringent of New York State, Federal, or States' requirements in the locale where services are being provided for file retention and destruction requirements and further agrees that all Claim files and records are the sole property of NYSIF.
18. Bidder must, for the duration of the contract if requested by NYSIF, provide a copy of your most recent SOC1 (Type I or Type II), SOC2, or SOC3 report. NYSIF would also accept a Report on Internal Control Evaluation if a SOC1 report has not been prepared.

NOTE: SSAE 18 Reports:

If Contractor utilizes a Statement on Standards for Attestation Engagements (SSAE) No. 18, as developed by the American Institute of Certified Public Accountants (AICPA), within the past twenty-four months prior to the Agreement, Contractor shall provide NYSIF with a copy of Contractor's Service Organization Control (SOC) Report types 1, 2, or 3, on an annual basis. Such Report(s) shall be used for information purposes only. NYSIF reserves the right to request a copy of the Report(s) during the Agreement duration (including option periods). Production of Contractor SSAE 18 Report, or SOC Reports shall not take the place of NYSIF's right under the Agreement to independently audit Contractor.

19. For the duration of the contract, if requested by NYSIF, provide audited financial statements, for each fiscal year, reflecting your financial condition.
20. Allow on-site or remote claim audits of all claims by NYSIF personnel or by qualified independent auditors appointed by NYSIF.

4. FINANCE REQUIREMENTS

Bidder must provide the following itemizations for out of state coverage policies and claims on a periodic basis, including but not limited to, written premiums, earned premiums, unearned premiums, case losses reserves, losses paid, ALAE paid, and ALAE case reserves. Separately, the fronting company or its intermediary must provide an itemized report of the fees incurred and to be paid to the fronting company and/or intermediary as well as any additional expenses related to taxes and assessments. These reports must be found satisfactory by NYSIF for the purpose of financial audit/reconciliation and reporting compliance.

5. DESIRABLE SUPPLEMENTAL SERVICES

Any Bidder that has the capacity to provide supplemental services associated with the services NYSIF is seeking under this RFP is encouraged to provide additional information, including but not limited to, details on the service(s) being offered and how the service is provided, the

states where these services are available if limited by location, and the rates associated with the service(s). Should NYSIF request these supplemental services, rates will be subject to negotiation.

6. EXPIRATION / TERMINATION

Upon expiration/termination of the resulting contract(s), the Contractor agrees:

- A. Until the closing of the last Claim administered under this Agreement, all provisions of this Agreement shall otherwise remain in force and in effect, including but not limited to the Contractors' obligations to administer Claims arising from accidents occurring between the effective date and date of expiration or termination.
- B. During the term of any contract resulting from this RFP and until the expiration of three (3) years after final payment under any such contract, the supplier shall create, maintain, and provide NYSIF and/or its duly authorized representatives with access to, and the right to examine, any books, documents, papers, and records of the supplier that adequately document and fully substantiate the validity of supplier's reimbursement for work performed under the contract.
- C. Notwithstanding the provisions of Exhibit C, Clause 3 to the contrary, the Contractor shall be compensated for the services at the rate of compensation applicable thereto for the immediately preceding term.

7. COST/INVOICING/FEE SCHEDULE

Bid prices for all fees, services, and other expenses incurred by the Bidder/Intermediary/Fronting Carrier shall be "all inclusive" and not subject to cost-reimbursement - other than reimbursement for actual paid losses (paid indemnity, paid medical, paid ALAE). All prices shall include all direct and indirect costs, including, but not limited to, implementation service, including any "startup" and/or "programming fees", technical training, any and all services related to claims administration, service agreements and licensing, direct labor costs, overhead, fee or profit, travel, clerical support, equipment, materials, supplies, managerial (administrative) support, system maintenance, system trouble shooting and modifications, all documents, reports, forms, reproduction and any other costs. All fees for administrative claims handling and all other ULAE/NALAE, provided by the Fronting Insurance Firm(s), shall be included in the "Life of Claim Administration Fees" found on page 3 of the Appendix Z Fee Schedule.

No other add-on costs are permitted. The rates established within the Appendix Z Fee Schedule will remain fixed for the term of the contract. Bidders will be compensated based upon the rates established on the Fee Schedule for the applicable contract years.

The Financial Proposal will be comprised of three (3) parts as outlined below; however, the Bidder must be able to provide all services outlined herein.

Part 1: Policy Fees

Part 2: Life of Claim Administration Fees

Part 3: Writing Tiers

If the Bidder proposes a zero-value fee for any Service line, that service line should be marked as zero and not left blank. Blank service lines will be evaluated as zero value fees and incorporated into the Contract as such. Bidders are not to change, delete, or make any additions to this form, and are to supply only the bid information that is required. If any

changes, deletions, or additions are made by the bidder, or if all of the required bid information is not provided, then at NYSIF's discretion, the bid may be disqualified.

NYSIF uses electronic funds transfer for payments to contractors and vendors, consistent with the NYS Taxpayer Accountability Office initiative to reduce payment processing costs. NYSIF's EFT policy and Vendor Authorization form are located on [NYSIF's website](#).

Below please find additional details on the Fee Structure for the Out of State Coverage Program Services.

PART 1: "Policy Fees"

Bidders will provide a percentage (%) rate based upon the gross net premium for the following service categories:

- 1) Commission
- 2) Fronting Fee
- 3) Premium Tax

PART 2: "Life of Claim Administration Fees"

Please note the following

- A Claim can only fall into one of the three (3) categories outlined below.
- These "Life of Claim" fees are one-time payments per claim.
- If a Claim is reclassified, the payment will be handled as follows:
 - If the new classification is more than the original classification, NYSIF will pay the difference in rates.
 - If the new classification is less than the original classification, the Bidder must credit or reimburse NYSIF the difference in rates.

INDEMNITY CLAIM - For the purpose of determining the applicable life of claim fee, "Indemnity" shall be defined as when an injured worker loses time that results in an indemnity payment; or when a claim requires extensive investigation, litigation or has a hearing scheduled.

MEDICAL ONLY CLAIM - For the purpose of determining the applicable life of claim fee, "Medical Only" shall be defined as when an injured worker only requires medical attention and does lose time from work or receive indemnity benefits.

INCIDENT / REPORT ONLY - For the purpose of determining the applicable life of claim fee, "Incident" or "Report Only" shall be defined as an injury or event that does not rise to the level of reportability in governing jurisdiction, and does not require significant claims handling, contact or investigation, and is thought to be solely for the purpose of record keeping.

PART 3: "Writing Tiers"

Bidders will outline the Writing Tier's and the associated "Loss Cost Multipliers" for each tier. Bidders will also be required to provide a detailed description on the offerings of each Writing Tier, including but not limited any benefits, restrictions or exclusions (i.e. class codes, jurisdictions, etc.) associated with the Tier.