STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of
the Bid Protests filed with respect to the
Electronic Benefit Transfer services contract
Contract No. C007589

Determination
of Bid Protest

September 13, 1996

This Office has completed its review of the above referenced contract and the bid protests filed by the Check Cashers Association (CCA) and the Transactive Corporation (Transactive) related to the award of that contract. As outlined in further detail below, we have determined that the grounds advanced by the protestors are without significant merit and, therefore, are today approving the contract.

BACKGROUND

Facts

On April 6, 1995, a Memorandum of Understanding was executed by a coalition of seve. northeast states (Coalition)[1] which provided that the signatory states would work together to research, investigate, design and develop an Electronic Benefit Transfer (EBT) system to serve the needs of public assistance and food stamp benefit recipients. The Memorandum of Understanding did not obligate any of the contracting state agencies to implement any EBT system developed jointly or individually by the contracting state agencies. Rather, the Memorandum of Understanding permitted each state to execute a contract with the successful bidder on terms consistent with a Request For Proposal (RFP) issued by the Coalition. Further, each contracting state agency retained the right to modify or terminate any contract or system pertaining to EBT as determined to be in that state's best interest.

The EBT system is intended to establish a replacement system for the distribution of public assistance benefits including Food Stamp Benefits, AFDC Benefits, State Assistance, Child Support Disregard, Home Energy Assistance Program and Supplemental Social Security Income. Under the EBT system, recipients of these government assistance programs will be issued benefit cards which, when combined with an access device such as a personal identification number, will provide access to governmental benefits through point of sale (POS) terminals and unattended automated teller machines (ATMs). Currently, in New York City,

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[1] The coalition consisted of the states of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

these governmental benefits are distributed through a system known as the Electronic Payment File Transfer System (EPFT). Under the EPFT, a benefit recipient is provided with a benefit card which is presented to a clerk at a terminal who verifies the identity of the recipient and distributes the benefits.

On June 22, 1995 the Coalition released its RFP to acquire EBT services. The RFP established July 2, 1995 as the deadline for entities to indicate their intention to bid on the EBT procurement. Over 20 entities indicated an intention to bid. On July 3, 1995 the New York State Department of Social Services (DSS) released RFP dates and appendices pertinent to the provision of EBT services in New York. Entities that indicated their desire to bid were permitted to submit any questions concerning the RFP prior to July 26, 1995. Answers to questions submitted by the July 26, 1995 deadline were distributed on August 11, 1995. Five entities submitted offers to the Coalition in response to the RFP by the September 14, 1995 deadline.[2]

On November 7, 1995 a Best and Final Offer (BAFO) letter was mailed to the five offerers, wherein each offerer was required to submit, by November 22, 1995, (i) a BAFO under scenario I for the provision of EBT services as proposed in the RFP and (ii) a BAFO under scenario II wherein food retailers were not to be charged for POS equipment and usage dedicated exclusively to EBT use.[3] On December 15, 1995 after receipt of initial BAFOs from the five bidders, the Coalition sent a BAFO clarification letter to the offerers, advising the offerers that the procurement would be awarded based upon scenario II and revising the RFP with respect to the issues of monthly service standards and liquidated damages. Responses to the BAFO clarification letter were due on January 8, 1996.

On February 5, 1996 the Coalition notified Citicorp that it was selected under the RFP and, therefore, was the contractor which the Coalition would recommend to each constituent state as the contractor with which such state should enter into negotiations for the provision of EBT services. Accompanying the February 5, 1996 letter to Citicorp was a list of contingencies which needed to be resolved to the satisfaction of the Coalition during the negotiation period.

After the Coalition selected Citicorp as the successful bidder, but before DSS awarded the contract to Citicorp, the CCA commenced an Article 78 proceeding challenging the proposed action of DSS. On April 15, 1996 DSS and Citicorp executed a seven year, multimillion dollar contract for the provision of EBT services throughout New York State. In accordance with section 112 of the State Finance Law (SFL), on April 16, 1996 DSS submitted the DSS/Citicorp

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[2] The five entities were Citicorp, Chemical Banking Corporation, First Security Processing Services, Fleet Financial Group, Inc., and Electronic Data Systems.

[3] This scenario was based upon the fact that under Federal law such charges were not permitted to be passed onto retailers. Although a waiver of this requirement had been sought, it was uncertain if it would be granted.

contract for the acquisition of EBT services to this Office for approval. On or about June 4 1996 Transactive commenced an Article 78 proceeding challenging the contract award to Citicorp.

Protesting Parties

CCA is a trade association representing most of the commercial check cashing companies in New York City. Presently, the members of CCA provide exclusive access to both cash benefits and food stamp benefits for public assistance recipients in New York City. CCA had indicated an intention to bid with respect to the original EBT procurement, but ultimately did not respond to the RFP. Negotiations occurred between members of CCA and Citicorp for the location of EBT facilities at the sites of the check cashing firms, but to date Citicorp has been unable to obtain the agreement of any check cashing company for the location of EBT facilities at these sites.

Transactive is a Delaware corporation which, among other things, acts as a processor of systems for the electronic distribution of benefits. Transactive was the primary subcontractor for Fleet Financial Group, Inc. in connection with the proposal which it submitted in response to the RFP.

Procedures and Comptroller's Authority

The Comptroller is required by section 112 of the State Finance Law to approve all State contracts which exceed $10,000 in amount before such contracts become effective. Because the Comptroller had not yet approved the EBT contract which was the subject of the litigation commenced by CCA and Transactive, it was agreed by this Office, DSS, Citicorp, CCA and Transactive that the Comptroller would treat the issues raised by the litigation as a formal bid protest and reach a determination with respect to such issues as part of our review of the EBT contract pursuant to section 112. Pursuant to this agreement, submissions were made on behalf of DSS, Citicorp, CCA and Transactive in accordance with a schedule agreed to by each of the parties.[4]

Because of the Comptroller's previous relationship with Citibank, by a determination made April 24, 1996, the Comptroller recused himself personally from participation in the review and determination of this bid protest.

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[4] The first submissions were received on May 15, 1996 and final submissions were not submitted to this Office until June 27, 1996. In our review of the submitted materials, however, this Office determined that it was necessary to request further information from DSS, which was done by correspondence dated August 12, 1996. DSS provided further documentation in response to our request by correspondence dated August 23, 1996.

ANALYSIS OF BID PROTEST

CCA and Transactive have each alleged that the procurement and award to Citicorp violated state competitive bidding requirements as a result of certain actions by the Coalition during the course of the selection process that the protestors believe were improper. In addition, CCA claims that the award to Citicorp is not in the best interest of the State because recipients will not be provided adequate access to their benefits.

COMPLIANCE WITH COMPETITIVE BIDDING REQUIREMENTS

A Propriety of post-proposal amendments to the RFP

The protestors allege that the RFP was substantially and materially amended after the initial proposals had been submitted. After the initial submission deadline (September 14, 1995) had passed and proposals in response to the original RFP had been received, a series of letters were sent to the five offerers amending certain provisions of the RFP.

Material or substantial irregularity in the bidding process, which undermines the fairness of the competition, impermissibly contravenes the public interest in the prudent and economical use of public moneys (Conduit and Foundation Corp. v Metropolitan Transportation Authority, 66 NY2d 144, 148, 495 NYS2d 340 (1985)). In the context of the "strictly enforced framework of fair competition" set forth in the competitive bidding statutes (Fischbach and Moore, Inc. v New York City Transit Authority, 79 AD2d 14, 435 NYS2d 984 (2nd Dep't 1981), we must determine whether the changes made to the RFP after the submission of the initial offers were significant enough (from the original RFP requirements) to create a substantial possibility that potential bidders might be placed at a competitive disadvantage (see, Decker v Gooley, 212 AD2d 893, 622 NYS2d 374 (3rd Dep't 1995); Fischbach and Moore, Inc. v New York City Transit Authority, supra).

In deciding whether a change is material or substantial in this context one must focus on whether the changes or modifications "alter the essential identity or the main purpose of the contract" so as to constitute a new undertaking (Albert Elia Building Co. Inc. v New York State Urban Development Corp., 54 AD2d 337, 343, 388 NYS2d 462, 467 (4th Dep't 1976) quoting Del Balso Construction Corp. v City of New York, 278 NY 154 (1938)). In addition, we note that it is our view that with respect to changes to the specifications made by the issuing agency after the receipt of the initial bids, the issuing agency is under a heightened burden to demonstrate that no potential bidder was adversely affected by the changes, and, therefore, the changes did not limit competition (see, Decker v Gooley, supra; Fischbach and Moore, Inc. v New York City Transit Authority, supra).

At the outset, before discussing the individual changes to the RFP, we note that the changes made to the RFP were made in the public interest and there has been no evidence presented to this Office to suggest favoritism, fraud or corruption in the procurement process —

and such factors should be considered in our review of the actions of DSS (see, Decker v Gooley, supra; Fischbach and Moore, Inc. v New York City Transit Authority, supra). Further, and of equal importance, we find, for the following reasons, that the changes in question did not materially or substantially alter the core services required under the RFP for the EBT procurement:

(i) the imposition of EBT related charges on food retailers for POS equipment and usage;
While the original RFP permitted bidders to charge food vendors for terminal installation, in accordance with Federal law (see footnote 3), the amended RFP prohibited the imposition of EBT related charges upon the participating retailers. Such a change does not alter the core services required under the RFP.

(ii) the imposition of specific performance standards;
The amended RFP expanded an existing requirement of the RFP. The amendment set forth with more particularity the specific performance standards that were to be met by a successful bidder. Accordingly, we do not view this change as substantial or material.

(iii) calculation of liquidated damages; and
The amended RFP transformed an open ended liquidated damages provision into a more definitive measure of the successful bidder's liability with respect to liquidated damages.

(iv) written guarantee of cash access and onsite visits to participating food retailers.
These changes did not alter the core services under the RFP, or put any bidder at a potential disadvantage.

Based upon the foregoing, the core services required under the RFP remained unchanged throughout the procurement process and, therefore, these changes did not alter the essential identity or the main purpose of the contract.

While we are satisfied that these changes did not alter the essential identity or the main purpose of the contract, we believe that where, as here, a change is made to an RFP after the receipt of the initial bids and competition is then limited to those offerors who submitted bids in response to the original RFP, such changes are proper only where it is clear that the changes did not unduly disadvantage any potential bidder who had not bid on the original RFP and, therefore, the changes did not ultimately limit competition (see, Decker v Gooley, supra; Fischbach and Moore, Inc. v New York City Transit Authority, supra). While we recognize that this may be a difficult standard, we believe that such a standard is necessary in order to ensure the essential fairness of the bidding process.

In this case, however, we are satisfied that none of the above referenced changes in any way limited competition. A review of all of the changes clearly illustrates that the changes, particularly the change which prohibited the imposition of EBT related charges upon

participating food retailers, increased the overall cost and risk to actual and potential bidders. In this regard, we note that no evidence has been presented to this Office which would suggest that a potential bidder who had not submitted a response to the original proposal would have made an offer if the changes had been in place prior to the initial proposals.

B. Responsiveness of Citicorp's proposal to the RFP

The protestors assert that the Coalition selected and DSS contracted with Citicorp even though Citicorp's proposal was not responsive to the RFP. Specifically, it is argued that: (i) Citicorp's proposal failed to identify any specific rational plan to provide adequate cash access and retailer participation; (ii) Citicorp was improperly provided the opportunity to supplement its proposal, with respect to the above; and (iii) DSS entered into a contingent award with Citicorp for the provision of EBT services and ultimately waived the contingencies and awarded the contract to Citicorp (even though Citicorp did not comply with the contingencies, i.e., written guarantee of adequate cash access).

The State may waive technical non-compliance with bid specifications if the defect is a mere irregularity and it is in the best interest of the State to do so (see, LeCesse Brothers Contracting, Inc. v Town Board of the Town of Williamson, 62 AD2d 28, 403 NYS2d 950 (4th Dep't 1978), affd, 46 NY2d 960). However, where the variance between the bid and the specifications is material or substantial the defect may not be waived and the bid must be rejected so that all bidders may be treated alike and so that the possibility of fraud, corruption or favoritism is avoided (Id). Further, the requirements of competitive bidding provide that essential information missing from a bid at the time of opening may not later be supplied (Id).

The RFP provided that "[o]fferors shall provide in their responses a plan for insuring adequate recipient access to cash" (RFP §4.4.7). If Citicorp had failed to submit a plan, or had submitted a "plan" which was so deficient and inadequate as to not constitute a meaningful "plan", it is possible that DSS could have, or might have been obligated to, reject the Citicorp proposal as nonresponsive. However, this is not the case. Citicorp submitted both a retailer recruitment plan and a cash access plan. Furthermore, notwithstanding the assertion by CCA that Citicorp's scores for these categories were zeroes, our review of the Citicorp proposal reveals that Citicorp's scores fell squarely within the mid-range of the potential scores for these categories and presumably reflect the analysis of the evaluation committee that these plans had both some strengths and some weaknesses.

In any event, the RFP merely required that the proposals be subject to an initial pass/fail technical evaluation and only offers which passed the technical evaluation would be considered for ultimate selection (RFP §2.10). The two categories in question constituted only a portion of the technical scoring of the proposals and even low marks with respect to these two categories would not compel a determination that Citicorp's proposal was nonresponsive. Therefore, since Citicorp's proposal passed the initial technical evaluation, Citicorp was clearly a responsive bidder.

Since, as set forth above, we have determined that the plan submitted by Citicorp as part of its proposal was responsive to the RFP, there is no need to address the assertion by the protestors that Citicorp was improperly allowed to supplement its proposal in order to make it responsive on this issue.

With respect to the "contingencies"contained in the February 5, 1996 letter to Citicorp, any negotiations with the awarding agency and the successful bidder are permissible (see, Kick v Regan, 110 AD2d 934, 487 NYS2d 403 (3rd Dep't) appeal denied, 66 NY2d 601 (1985); Decker v Gooley, supra; Fischbach and Moore, Inc. v New York City Transit Authority, supra) .

C. Compliance with SFL §163(10)

The protestors allege that the procurement was awarded to Citicorp solely on the basis of price -- Citicorp's price offer was more than 10% below the price offer of the other bidders[5]--- and, therefore, DSS did not award the contract on the basis of best value.

SFL §163(10) provides that "[c]ontracts for services shall be awarded on the basis of best value from a responsive and responsible offerer." "Best value" is defined as "the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers" (SFL §163(1)(j)). The crux of this argument is that price alone cannot be the sole determinative factor in the award of a best value procurement. We must view this award in light of the purpose of the new legislation governing state procurements as well as the draft procurement guidelines developed by the State Procurement Council (established by SFL §161) and distributed to state agencies.[6]

The Draft Guidelines provide that:

> [I]t is expected that there will be occasions when it makes sense to boil down a best value award for services to a lowest price determination. Specifically, best **value can be equated to lowest price in those cases when:**
> **price is the only criterion for making the decision among responsive and responsible competing offers;**
> **"quality" and "efficiency" requirements have been fully defined in the specifications; and**
> **price equals cost.**

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[5] Citicorp's successful bid was actually 18% lower than the next lowest proposal.

[6] SFL §161(2) provides that the State Procurement Council shall establish and maintain guidelines concerning state procurement and provide for the appropriate distribution and dissemination of such guidelines.

> In these cases, while the award will still technically be made on the basis of best value, best value will be interpreted to mean the offer having the lowest price that meets specifications among responsible offerers.

(Draft Guidelines IV-9, IV-10, emphasis in original).

The foregoing language clearly indicates that an agency may, in a best value procurement, in certain cases, equate best value with lowest price. We believe that this is a reasonable interpretation of the statute. Further, in this case the establishment of a "competitive range" does not constitute an equation of price equals best value. Rather, the establishment of a competitive range reflects a determination by an agency that where the price proposed by one or more responsive and responsible bidders is lower than the price of the other offerers by a stated amount or percentage, any increase in value potentially embodied in the higher priced offers will be more than offset by the increase in value offered by the cost savings of the lower priced proposal. We believe that such an approach is clearly consistent with the statutory requirement that the award of service contracts be made on the basis of best value. Viewed in this light, the specifications set forth in the RFP, which provide for an award to a technically qualified offerer within a competitive range of the low bidder, constitute a permissible best value determination.

In addition, an argument has been raised that prior to making a best value award based upon a price determination, DSS was required to make a finding that one or more bids were "substantially equivalent". SFL §163(10)(a) provides in pertinent part that:

> In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient or, when price and other factors are found to be substantially equivalent, the determination of the commissioner or agency head to award a contract to one or more such bidders shall be final ...

Contrary to the protestors' assertions, this provision does not require, by its terms, a determination that bids are "substantially equivalent" as a prerequisite to an award based upon price. Rather, the language of the provision merely sets forth the basis for an award when an agency makes a "best value" determination and finds that two or more bids are substantially equivalent. In such a case, SFL §163(10)(a) designates "price" as the controlling, i.e. tie-breaking, factor with respect to the procurement award. Such a reading of this provision is consistent with the final clause of SFL §163(10)(a) which provides that in the event that the substantially equivalent bids are substantially equivalent with respect to price, the commissioner or agency head is authorized to make the selection. Therefore, a determination of "substantial equivalence" is not a prerequisite for a best value award based upon price.

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D. Compliance with SFL §163(9)(b)

The protestors assert that the evaluation and selection process utilized to evaluate the technical components of the proposals differed from that established in the RFP. Specifically, it is alleged that while the RFP listed five weighted criteria for the technical review of the proposals, the process utilized involved scoring the proposals on the basis of 108 previously unidentified criteria. In effect, the protestors are asserting that section 163(9)(b) requires that the list of the 108 evaluation criteria be set forth in the RFP.

SFL §163(9)(b) provides that:

> The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a state agency in its determination of best value.

The 108 subpoints utilized in the technical evaluation of the proposals are subsets of the five listed criteria set forth in the RFP and were established prior to the issuance of the RFP. Moreover, the five general criteria set forth in the RFP were indeed weighted and scored as described. Therefore, the use of subsets did not alter the computation of the scores. Therefore, the requirement of SFL §163(9)(b) that the agency disclose the "general manner" in which the evaluation of the offers is to be conducted was satisfied.

In addition, consistent with the rules of statutory construction, SFL §163(9)(b) must be read in conjunction with SFL §163(7) (the text of which is set forth in section I(E) below). State Finance Law §163(9)(b) requires that the agency disclose the "general manner" in which the evaluation of offers is to be conducted. SFL §163(7) requires that the specific detail of the basis for the award be documented "in the procurement record" prior to the receipt of the offers by an agency. The argument advanced by the protestors, namely, that the detailed list of the 108 criteria must be set forth in the RFP, ignores the plain language of §163(7). Such an interpretation would render SFL §163(7) superfluous and, therefore, must be rejected.

With respect to the identification of the relative importance and/or weight of cost in the RFP, Section 2.10 of the RFP provides that:

> If, in the cost ranking, proposals vary significantly in terms of price, (i.e., other price offers are not in a competitive range), then the price offer will be the basis of selection.

The language of section 2.10 of the RFP which requires that a bid be within a competitive range of the low bidder to be eligible for selection satisfies the general requirements of SFL §163(9)(b) that the solicitation identify the relative importance and/or weight of cost.

E. Compliance with SFL §163(7)

SFL §163(7) provides in pertinent part that

> Where the basis for award is the best value offer, the state agency shall document, in the procurement record and in advance of the receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.

CCA and Transactive assert that the failure to establish the competitive range prior to the receipt of the initial offers violated section 163(7). DSS and Citicorp argue, however, that: (i) the provision in the RFP which indicated that proposals not within a competitive range would not be considered for selection satisfies the requirement of section 163(7); and (ii) in any event, the establishment of the competitive range prior to the receipt of the final best and final offers satisfies the requirements of that section.

We need not consider the first argument raised by DSS and Citicorp since we believe that, in any event, the requirements of section 163(7) were satisfied, in this instance, by establishing the competitive range prior to the receipt of the offers upon which the award was made. Clearly, the quantification of the competitive range occurred prior to the receipt of the proposals which were the basis for the award made by DSS. We believe that this constitutes literal compliance with the statutory requirements.

We recognize, however, that while the establishment of the competitive range prior to the receipt of the final offers may satisfy the letter of the law, it may not in every case satisfy the spirit of the law. Specifically, it is possible that in some cases an agency which established the competitive range after the receipt of the original offers and prior to the receipt of the final offers could have the ability, and could in fact, establish the competitive range in a manner designed to favor a particular vendor. This would clearly be inconsistent with the spirit, if not the letter, of section 163(7), and if it were determined during the course of our review of a procurement that this was the case, such a finding would provide the basis for rejection of the contract.

In this case, however, we have carefully reviewed the materials submitted by DSS and believe that the competitive range was not, and could not have been established in a manner designed to favor a particular vendor. In this regard, DSS has provided this Office with documentation to establish that: (i) because of the clarifications and changes which were incorporated as part of the best and final offer process, the Coalition could not have reasonably

predicted the cost proposals which they would receive as part of the best and final process and therefore could not establish the competitive range in a manner designed to favor a particular vendor; and (ii) the competitive range was established in a fair and impartial manner by the Coalition.[7] In support of their assertions, DSS has provided affidavits from a number of the Coalition representatives from other states which clearly state that they concur with DSS' position. Accordingly, consistent with the findings set forth in section I(A) above, we find the establishment of the competitive range was also "...in the public interest, with no unfair advantage to the low bidder at the other bidders' expense" and that there is "no evidence of favoritism, fraud, or corruption ..." (see, Decker v. Gooley, supra). It is our conclusion that in this case the establishment of the competitive range after the receipt of initial offers but prior to the receipt of offers upon which the award was made did not violate the letter or the spirit of section 163(7) of the State Finance Law.

II. THE EBT SYSTEM AND THE BEST INTEREST OF THE STATE

A. Adequate access to recipient benefits under the EBT system

CCA alleges that Citicorp does not have the necessary number of bank branches in the communities which would be significantly impacted by the implementation of the EBT system to provide adequate access to public assistance recipients. Further, it is alleged that Citicorp intends to make use of a "hodgepodge" of delivery sites (principally "cash back" from food retailers and ATM machines) to serve such areas and, consequently, recipients will not be provided with adequate access to their cash benefits.

At the outset we note that DSS is authorized and required to administer and distribute all forms of public assistance and, to this end, DSS is authorized to establish policies and programs to carry out its duties (Social Services Law §§ 20, 131). Furthermore, DSS is vested with broad power and discretion to interpret and implement legislative policy (Berstein v Toia, 43 NY2d 437, 402 NYS2d 342 (1977)).

With respect to the provision of EBT services, the RFP requires that the successful contractor provide "adequate access" to recipients. DSS represents that "adequate access" means that access which, at a minimum, equals the cash access presently available to recipients. To this end, under the terms of the contract Citicorp was required to submit a Cash Access Report to DSS by June 11, 1996 demonstrating its ability to provide adequate access in certain geographic areas known to require particular attention. Citicorp did, in fact, meet this requirement by submitting such a report on June 11, 1996. Further, the DSS/Citicorp contract

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[7] The competitive range governed not only the DSS procurement, but those of the other Coalition states as well.

provides for financial penalties if Citicorp does not meet its cash access goals.[8]

Based upon our review of Citicorp's Cash Access Plan and Cash Access Report, we concur with DSS' determination that Citicorp has demonstrated its ability to provide recipients with adequate access to cash benefits. Moreover, we have been advised by DSS that pursuant to the EBT services contract, adequate access to benefits means, among other things, that benefit recipients will, at a minimum, be provided with the same number of sites in their neighborhoods at which they may receive their full cash benefits as is currently available. If it is determined by DSS that the number of sites available are not equivalent to current levels, DSS has the contractual right to compel Citicorp, at its own expense, to establish such facilities. Based upon our initial review, we determined that the language of the contract was not altogether clear. Accordingly, we have required, and DSS has provided, written clarification from the parties with respect to this issue.

B. Consequences of the implementation of the EBT services contract in the neighborhoods currently serviced by the CCA.

CCA argues that if the EBT system is implemented, as currently structured, 45% of the check cashers in New York City will be forced to close their doors and that as a result, local employment, and check cashing rates, will be adversely affected in neighborhoods currently served by the CCA.

We note, however, that the purpose behind the EBT system, consistent with a nationwide trend toward greater utilization of electronic fund transfers, is to enable DSS to more efficiently distribute benefits at significantly lower cost to the State. The proposed system is projected to save New York State taxpayers more than $32 million annually for a period of seven years while at the same time improving services to its client population. Any adverse impact on the check cashers industry must be weighed against these substantial savings and improved delivery of service.

Citicorp is contractually bound to ensure that access to benefits is equivalent to current levels, and may negotiate fees for participation in the EBT system with existing business locations in affected neighborhoods. Those fees will generate economic activity in such affected neighborhoods. Check cashers are free to negotiate with Citicorp to participate in the EBT system. The ability or inability of a particular business to negotiate successfully for participation in EBT is not a sufficient ground for rejection of the contract. This is the case particularly where, as here, Citicorp must meet the standards established by DSS to assure that recipients will receive adequate access to their benefits.

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[8] The EBT services contract contains a liquidated damages clause which provides that the contractor can be assessed $2,000 per day or a daily rate up to the additional cost of maintaining the current delivery system for the contractor's failure to complete its cash access plan within seventy-five (75) days of the contract start date.

CONCLUSION

Based upon the foregoing, this Office has determined that the procurement for the acquisition of EBT services was conducted in a manner consistent with the competitive bidding requirements of this State. Accordingly, we are today approving the contract.

James M. DePasquale
Deputy Comptroller