

Single Bank Pooled Method Administrator RFP Questions

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Nebraska Department of Banking and Finance

January 24, 2020

Responses to Questions regarding RFP 2020-001

The Nebraska Department of Banking and Finance has issued a Request for Proposal for an Administrator of the Public Funds Security Act Single Bank Pooled Method described in Nebraska Revised Statutes Sections 77-2386 et seq.

The last day to submit questions regarding the RFP was 1/17/2020. Below are the Department's responses to all questions submitted by the deadline.

RFP can be found at this link:

<https://ndbf.nebraska.gov/sites/ndbf.nebraska.gov/files/news-release/Banking%20and%20Finance%20RFP2020-001.pdf>

“RFP Number 2020-001-Public Funds Security Act Single Bank Pooled Method Questions”

	Solicitation Section Reference	Solicitation Page Number	Question
#1.	<i>Scope of Service</i>	<i>Cover Page</i>	<i>Does the Department anticipate appointing more than one Administrator?</i>
	Response to #1		No. However, in the event of the need for a successor Administrator to be appointed, it may be possible that more than one Administrator could be named over the life of the appointment.
#2.	<i>Glossary of Terms and Section V., B. 12</i>	<i>Page viii and page 20</i>	<i>Should the definition of “public depositor” reflect a reference to “agency” or “state agency” rather than “state entity” as proposed?</i>
	Response to #2		No. The reference to “public depositors” is to political subdivisions of the State of Nebraska, such as School districts, townships.
#3.	<i>Section I., Q.</i>	<i>Page 6</i>	<i>Does NDBF anticipate conducting oral Interviews / presentations?</i>
	Response to #3		Yes. NDBF will conduct oral interview / presentations if necessary to assist in the Administrator selection.

#4.	Section I., Q.	Page 6	<i>If an applicant knows it will not be available for oral interview/presentations during the time frame identified in the RFP, can alternate arrangements be made for this purpose?</i>
	Response to #4		Yes.
#5	Section I., R.	Page 6	<i>Does NDBF anticipate asking for additional Best and Final Offers? If so, in light of the July 1, 2020, effective date of the law, is this potential factored into the timeline?</i>
	Response to #5		Yes. If necessary, NDBF will request BAFOs. Potential for BAFOs has been factored into the proposed timeline; however, NDBF reserves the right to adjust the timeline.
#6	Section II., B.	. Page 8	<i>If notifications are intended to apply for issues beyond the appointment of the Administrator, should notification by electronic means be authorized?</i>
	Response to #6		Yes.
#7	Section II., M.	Page 10	<i>Since the Administrator is granted the same statutory immunity as the Director/Department of Banking, is a cashier's check or performance bond necessary?</i>
	Response to #7		A legal conclusion as to the extent of immunity extended to the Administrator has yet to be determined. The Department is requiring a cashier's check or performance bond of the Administrator. The Director will not consider any applicant administrator unwilling or unable to post such security.
#8	Section II., M,	Page 10	<i>Does the Department intend to require the performance bond or cashier's check to be provided by the designated Administrator?</i>
	Response to #8		Yes. The Performance bond or cashier's check must be provided by the designated Administrator upon appointment.
#9	Section II., M.	Page 10	<i>If a cashier's check or performance bond in the amount of \$100,000 is required to be provided by the designated Administrator, has the cost of the performance bond been factored into the fees that may be charged by the Administrator?</i>
	Response to #9		No. A performance bond for services to be provided to or on behalf of the State of Nebraska is not extraordinary.

#10	Section II., M.	Page 10	Can applicant satisfy the contract surety requirements through use of a bank-issued or FHLB-issued letter of credit?
	Response to #10		Yes, provided the letter of credit can be drawn upon demand by NDBF.
#11	Section II., Q.	Page 11	Should the RFP contain provisions addressing the circumstances under which the applicant may terminate its obligation to administer the program?
	Response to #11		The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth all circumstances under which the applicant would terminate its obligation to administer the program, or forfeit its appointment.
#12	Section III., B.	Page 13	Parent corporation of applicant currently provides payroll services for applicant. May the parent corporation satisfy the requirement to “use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the appointment period?”
	Response to #12		Yes.
#13	Section III., E.	Page 14	Would NDBF consider allowing an exception to the restriction on fee increases during the first two years of the appointment or any renewal thereof based on “unanticipated circumstances?”
	Response to #13		Unknown. NDBF will not speculate on future actions based on unknown circumstances. Any fee increases would be subject to the prior approval of the Director.
#14	Section III., F.	Page 14	How does NDBF anticipate determining “deviation from “industry standards?”
	Response to #14		By comparison to standard practices of other administrators and entities involved with monitoring, reporting or supervising the pledging of securities to secure public deposits.
#15	Section III., H.	Page 14	Can the RFP be clarified to confirm that applicant shall retain ownership and title of any software or processes developed to automate the program reporting process and the right to patent, license, or copyright, duplicate, transfer, sell, the design, specifications, concept, or deliverable of such software or processes?

	Response to #15		The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth all ownership and title concerns pertaining to its administration of the program.
#16	<i>Section III., I. 1.</i>	<i>Page 15</i>	<i>Can NDBF clarify who are “contractors’ employees?”</i>
	Response to #16		Any person employed by the Administrator or Sub-Administrator or who provides services in furtherance of the appointment.
#17	<i>Section III., I.</i>	<i>Page 16</i>	<i>Some of the required coverage limits exceed industry standards and are in excess of the limits currently in place under applicant’s insurance coverages and will result in significant cost increases for applicant. Will NDBF consider lower coverage limits for certain categories of required insurance coverage?</i>
	Response to #17		The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth any proposed lower insurance coverage limits pertaining to its administration of the program.
#18	<i>Section III., I.</i>	<i>Page 16</i>	<i>One of the required insurance coverages is “Independent Administrators” coverage. It does not appear that this term is utilized within the insurance industry as an acknowledged type of coverage. Would NDBF clarify the specific type of coverage that will satisfy this requirement?</i>
	Response to #18		Independent Contractor.
#19	<i>Section III., O.</i>	<i>Page 18</i>	<i>Can NDBF provide a timeframe within which the Administrator must comply with changed Nebraska Technology Access Standards in the event of an amendment to the appointment?</i>
	Response to #19		NDBF will consider commercially reasonable time frames for technology compliance in the event of an amendment to the Nebraska Technology Access Standards. Due to the potential of cyber security issues, a standard predetermined time is not practical and the Administrator will need to present compliance concerns to the Director on a case by case basis.

#20	Section III., R.	Page 18	Can NDBF clarify who or what constitutes the “Customer” of the administrator for purposes of the “Warranty” provisions?
	Response to #20		Customer includes all parties reliant upon the services of the Administrator.
#21	Section IV., C.	Page 19	With respect to activities of the State, State Auditor, or Department, will any audit conducted be limited to a review of applicant activity related duties as Administrator of the pooled collateral program or will other applicant-related activities and financial information be subject to audit?
	Response to #21		The Department is not in a position to limit, restrict or otherwise comment on any audit conducted by the Auditor of Public Accounts.
#22	Section V., F. (3) and Exhibit E – Transactions	Page 21 and 30	Can NDBF explain why provisions requiring the Administrator to pre-approve the acceptance, substitution or withdrawal of any Pledged Securities are included in the RFP? There does not appear to be any statutory authority for requiring prior approval by the Administrator. Section 77–2392 expressly provides that a bank, ...shall have the right at any time and without prior approval to substitute or exchange other securities of equal value” subject to the requirement that the substituted or exchanged securities do not reduce the market value of the securities to less than 102% of the public funds required to be collateralized.
	Response to #22		The agreement between the Administrator and bank should provide for advance notice to the Administrator of any security substitutions. The provisions should enable communications preventing pledging gaps or mismatches which may result in non-compliance fees while maintaining required collateralization of public funds. NDBF will consider responses which provide for prior or contemporaneous notice of substitution in lieu of prior approval. The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator.
#23	Section V., G.	Page 22	Will the Administrator, in “providing” reports to custodial officials within 20 days after receiving monthly reports from Covered Depositories, be

			able to satisfy the requirement by posting the required information on the Administrator’s website?
	Response to #23		If the governmental unit has agreed in advance to receive such reports by accessing the administrator’s website, provision of reports may be accomplished by electronic means.
#24	Section V., G.	Page 22	Should the reports referenced in Section V. G. (1)-(7) be made available only to program participants, rather than being made available to the public?
	Response to #24		The Department considers the reports referenced to be public records that should be made available to the public.
#25	Section V., G.	Page 22	As of what date is the information in the reports referenced in Section V. G. (1)-(7) to be obtained?
	Response to #25		The most recent available monthly report, as of the time of the request.
#26	Section V., H.	Page 22	Is the Administrator to retain any “non-compliance fees” received?
	Response to #26		Yes. So long as the fee reflects non-compliance with the guidance. The Department retains the authority to assess fines and penalties in accordance with the Banking Act.
#27	Section V., H. and Exhibit E – Noncompliance and Remedies	Page 22 and 31	Section V. H. authorizes recovery of non-compliance fee from Custodial Officials. The applicable list of program fees under Exhibit E only addresses non-compliance fees for Covered Depositories and Qualified Trustees and does not make any reference to Custodial Officials under the provisions regarding non-compliance and remedies. Should the RFP be revised to reflect the circumstances under which Custodial Officials may be subject to non-compliance fees?
	Response to #27		The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth any proposed circumstances under which Custodial Officials may be subject to non-compliance fees.
#28	Exhibit E – Month-end Bank Report of Deposits and Monthend Qualified Trustee Report	Page 29 and 30	The bank reporting requirement relating to “deposits” and the Qualified Trustee reporting requirement, contain categories of information relating to collateral at items r) and s), relating

			to face or par value and market value of securities pledged. Should these categories of information be deleted? If not, there would appear to be no statutory basis to require this information to be provided on a daily basis
	Response to #28		The listed reporting requirements are considered to be essential for the Department to evaluate the Administrator’s performance. The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth any proposed format and information to be contained on the report, the timeliness of said report and the justification for the same.
#29	Exhibit E – Month-end Bank Report of Deposits	Page 29	Does a requirement for covered depositories to report daily balances of deposits only apply if a deposit guarantee bond is utilized for pledging purposes? (See Section 77-2394)
	Response to #29		No. Administrator is to enable a process to confirm collateralization coverage, appropriately protecting public deposits.
#30	Exhibit E – Program Fees	Page 30	Will NDBF consider allowing a higher maximum application fee if application fees are tiered based on bank asset sizes?
	Response to #30		The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth any proposed higher maximum application fees based on bank asset size and the justification for the same.
#31	Exhibit E – Program Fees	Page 30	Will NDBF consider allowing an annual administration fee?
	Response to #31		The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth any proposed annual administration fee and the justification for the same.
#32	Section VI., B. 2.	Page 33	This section requires specifically named individuals who will be working on NDBF’s project to be identified and for resumes to be provided to NDBF for review. At this time, applicant is unsure as to

			whether it will appoint a current employee or employees to fill this administrative role or if it will hire new personnel for this purpose. May applicant simply designate individuals in leadership/supervisory roles who will ultimately be responsible for supervisions and for whom responsible individuals will ultimately report, to satisfy this requirement?
	Response to #32		Yes.
#33	General	N/A	If pending legislation (LB 854) is adopted, will the program requirements and forms be revised to reflect any such statutory changes?
	Response to #33		Yes.
#34	General	N/A	Will NDBF allow proposed forms and agreements (Exhibits B, C, D, and E) to be modified, based on anticipated input from participants (Covered Depositories, Custodial Officials and Qualified Trustees)?
	Response to #34		Yes. The RFP and the response of the applicant Administrator must contain all operating understandings between NDBF and Administrator. The applicant Administrator should set forth any proposed forms and agreements and the justification for the same.