



**Office of Children  
and Family Services**

**ANDREW M. CUOMO**  
Governor

**SHEILA J. POOLE**  
Acting Commissioner

**New York State  
Office of Children and Family Services  
Division of Juvenile Justice and Opportunities for Youth**

**INVITATION FOR BIDS**

**IFB # 2018-12**

**Psychiatric Services for Harriet Tubman Residential Center**

**Issued: July 27, 2018**

**BID DUE DATE: August 17, 2018 by 4:00 PM Eastern Time**

## Table of Contents

1. Introduction.....	4
1.1 Overview.....	4
1.2 Designated Contacts .....	6
1.3 Calendar of Events .....	6
1.4 IFB Questions and Clarifications.....	6
2. Bid Submission.....	7
2.1 Instructions for Bid Submission.....	7
2.2 Packaging of IFB Response .....	8
3. Specifications.....	9
3.1 Eligible Bidders .....	9
3.2 Product/Service Specifications.....	9
3.3 Delivery .....	10
3.4 Security Procedures.....	11
3.5 Warranty (if commodity purchase).....	11
4. Administrative Information .....	11
4.1 Method of Award .....	11
4.2 Price .....	12
4.3 Term of Contract.....	12
4.4 Method of Payment .....	12
4.5 Dispute Resolution .....	12
4.6 Contractor Responsibilities .....	13
4.7 Inspection of Books.....	13
4.8 OCFS Reserved Rights .....	13
4.9 Incurred Costs.....	15
4.10 Security, Nondisclosure and Confidentiality Agreement .....	15
4.11 Omnibus Procurement Act.....	16
4.12 Executive Order Number 38 & 177.....	18
EO#38– Limits on State-Funded Administrative Costs & Executive Compensation .....	18
4.13 Minority and Women-Owned Business Enterprises (MWBE) – Equal Employment Opportunity (EEO) - Requirements & Procedures .....	19
4.14 Service-Disabled Veteran Owned Business (SDVOB).....	22

4.15	Anti-Kickback Act .....	23
4.16	Contractor Responsibility .....	23
4.17	Multi-Agency Use .....	23
4.18	Contacts with Employees.....	23
4.19	Procurement Lobbying Act.....	24
4.20	Public Officers Law .....	25
4.21	Vendor Responsibility .....	25
4.22	Workers' Compensation Law.....	27
4.23	New York State Sales and Compensating Use Taxes .....	27
4.24	Contractor Employee and Volunteer Background/Confidentiality Non-Disclosure Agreement Forms.....	28
4.25	Consultant Disclosure Requirements.....	29
4.26	OCFS Procedure for Handling Debriefing Requests, Formal Protests and Appeals ....	29
4.27	Standard Contract Language .....	33
4.28	Appendix A - Standard Clauses for NYS Contracts.....	34
5.	Contract Documents .....	34

## 1. Introduction

### 1.1 Overview

#### **Purpose and Procurement Objectives**

The New York State Office of Children and Family Services (OCFS) operates the state's residential juvenile justice programs and oversees locally operated foster care, child abuse, daycare, youth development and delinquency prevention programs (YDDPP). The OCFS Division of Juvenile Justice and Opportunities for Youth (DJJOY) operates the residential programs for juvenile delinquents and juvenile offenders, and is issuing this Invitation for Bid (IFB).

OCFS seeks contractors to provide psychiatric services for juvenile delinquent youth and youthful offenders residing at Harriet Tubman Residential Center.

There are two positions available at Harriet Tubman Residential Center for a total number of hours not to exceed 624 a year per position. OCFS will make two separate awards for the two available positions. Bidders may submit a bid for one or both positions. It is anticipated the awarded psychiatrist(s) will work approximately 52 hours a month per position. These hours are based on current resident populations and should be performed during standard working hours as approved by the Supervising Psychiatrist and OCFS's Assistant Director of Treatment at the facility or their designee. The offeror(s) must divide these hours over multiple weeks per month per agreement with the facility management. Any change to the agreed upon schedule must be approved by the Supervising Psychiatrist and the OCFS's Assistant Director of Treatment at the facility or their designee.

The contracted psychiatrist(s) should expect to routinely work the number of hours identified in the paragraph above. For clinical or other reasons, OCFS may request that the contracted psychiatrist(s) work additional hours during any given week of the contract period. The annual number of additional hours will not exceed 264 hours per position a year for health and safety. It is anticipated the psychiatrist(s) could potentially work approximately 22 additional hours a month. The additional hours identified in this paragraph may be used to cover health and safety concerns along with shifts in residential population. Any monthly hours over 52 will require Supervising Psychiatrist approval before the hours are worked. All hours will be reimbursed at the bid rate.

Dependent upon OCFS need, OCFS may request that the contracted psychiatrist awarded from this procurement, accept a permanent or temporary change in assignment location within a reasonable distance of the original assignment location. OCFS may also request that the contracted psychiatrist awarded from this procurement, provide temporary coverage of another psychiatrist's schedule (at the same or a different facility) based upon need due to temporary absences (due to vacation, vacancy, illness, etc.). Additional hours will be limited to the schedule of the absent psychiatrist and shall not exceed the 264 hours per year. Such reassignment requests require the consent of the

contracted psychiatrist(s) and will be paid under the existing contract between OCFS and the contracted psychiatrist(s).

The lowest cost vendor(s) that meet(s) all the mandatory requirements will be awarded the contract(s) for the position(s). In the event the selected contractor(s) is temporarily unavailable (due to vacation, illness, etc.) the contractor(s) is responsible for coordinating coverage with the assigned supervising psychiatrist to obtain the services of another qualified individual (DJJOY supervising psychiatrist, staff psychiatrist or other DJJOY contracted or subcontracted psychiatrist), subject to OCFS approval, which will not be unreasonably withheld.

## **Background**

Youth entering limited secure and non-secure OCFS residential facilities have been adjudicated delinquent by family court, not criminal court, and are placed with OCFS for rehabilitative programming. They are children who require specialized behavioral health services as more than 50 percent of the youth in care have been diagnosed with at least one mental disorder. The majority of these youth range in age from fourteen (14) to eighteen (18) years old and approximately sixty-five (65) percent are African-American. Twenty-five (25) percent are Hispanic. Sixty (60) percent of youth are from the New York City area.

Secure residential centers are the most controlled and restrictive of the residential programs operated by OCFS, providing intensive programming for youth requiring this type of environment. The majority of youth admitted to secure facilities are sentenced as juvenile offenders or juvenile offender/youthful offenders by the adult courts. Youth in secure centers have an extensive history of delinquent behavior and involvement with the juvenile justice system that includes prior out-of-home placements.

The following is a description of the OCFS juvenile justice facility for which services are being sought:

**Harriet Tubman Residential Center is located at 6706 Pine Ridge Road Auburn, NY 13021.** The youth served are female adjudicated juvenile delinquents generally between the ages of 14 and 18, placed with OCFS by the New York State Family Courts. Dialectical Behavior Therapy (DBT) provides the over-arching model of treatment. Individual therapy is provided by licensed clinicians. A team comprised of clinical, professional and direct care staff facilitates DBT groups that use modules in mindfulness, distress tolerance, emotion regulation and interpersonal relationships to promote development of social skills. Licensed clinicians lead curriculum-based substance abuse education groups.

## 1.2 Designated Contacts

In compliance with the Procurement Lobbying Law, from the issuance of this Invitation for Bid (IFB) until contractors are selected, all contacts with the New York State Office of Children and Family Services (OCFS) personnel, except as otherwise specified herein, concerning this IFB must be made via email or hard copy mailed to:

New York State Office of Children and Family Services  
Attn: Bureau of Contract Management – RFP Unit  
**IFB# 2018-12 Psychiatric Services for Harriet Tubman Residential Center**

52 Washington Street, Room 202 South  
Rensselaer, NY 12144.

Email: [RFP@ocfs.ny.gov](mailto:RFP@ocfs.ny.gov). In both cases, please reference IFB# 2018-12.

## 1.3 Calendar of Events

The table below outlines the schedule for important action dates.

EVENT	DATE
Invitation for Bid (IFB) issued	7/27/2018
<b>Deadline for Submission of Offeror Questions</b>	<b>8/3/2018 by 5:00 PM Eastern Time</b>
Responses to Questions published (estimated)	8/10/2018
<b>Bid Due Date/ Bid Opening Date</b>	<b>8/17/2018 by 4:00 PM Eastern Time</b>
Contract Date	10/1/2018

## 1.4 IFB Questions and Clarifications

All questions regarding this IFB, including questions regarding the minimum qualifications and specifications, should be emailed to the designated contact identified in **Section 1.2 Designated Contacts** by the date and time indicated in **Section 1.3 Calendar of Events**. Questions submitted after the deadline indicated may not be answered. An Offeror is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective offerors in the form of a question and answer document which will be posted to the New York State Contract Reporter website (<https://www.nyscr.ny.gov>) and OCFS website (<http://ocfs.ny.gov/main/bcm/rfp.asp>) and will not identify the offeror asking the question.

## **2. Bid Submission**

### **2.1 Instructions for Bid Submission**

Only bids from offerors who furnish all required information and meet the mandatory requirements stated in Section 3 – Specifications will be considered. Submit all required bid documents to OCFS at the following address:

**New York State Office of Children and Family Services  
Attn: Bureau of Contract Management – RFP Unit  
IFB# 2018-12 Psychiatric Services for Harriet Tubman Residential Center**

**52 Washington Street, Room 202 South  
Rensselaer, NY 12144**

**E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.**

The State of New York will not be held liable for any cost incurred by the offeror for work performed in the preparation and production of a bid or for any work performed prior to the formal execution of a contract. Bids must be received in the above office on or before the date/time set forth in Section 1.3 – Calendar of Events. **Offerors assume all risks for timely, properly submitted deliveries.**

### **LATE BIDS MAY BE REJECTED**

Any bid received at the designated location after the established time will be considered a *late bid*. A late bid may be rejected and disqualified from award. Notwithstanding the foregoing, a late bid may be accepted in the commissioner's sole discretion where

- (i) no timely bids meeting the requirements of the solicitation are received; or
- (ii) the offeror has demonstrated to the satisfaction of the commissioner that the late bid was caused solely by factors outside the control of the offeror.

However, in no event will the commissioner be under any obligation to accept a late bid.

The basis for any determination to accept a late bid shall be documented in the procurement record.

### **FIRM OFFER**

Bids must remain an effective offer, firm and irrevocable, for at least 120 calendar days from the due date, unless the time for awarding the contract is extended by mutual consent of OCFS and the offeror. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 120 calendar-day period until either tentative award of the

contract(s), withdrawal of the procurement, or withdrawal of the bid in writing by the offeror.

## **OWNERSHIP OF IFB AND BIDS**

This IFB remains the property of the state at all times, and all responses to this IFB, once delivered, become the property of the state.

### **2.2 Packaging of IFB Response**

Bids must include the following attached forms:

- OCFS-0910 *Request for Bid*
- OCFS-4822 *Procurement Lobbying Act – Offeror Certification Form*
- *Vendor Responsibility Questionnaire For-Profit Business Entity*
- OCFS-4715 *Confidentiality Non-Disclosure Agreement*
- OCFS-4716 *Contractor Employee and Volunteer Background Certification*
- OCFS-2647 *EO 177 Certification*

Attachments are available on the New York State Contract Reporter website (<https://www.nyscr.ny.gov>) and OCFS website (<http://ocfs.ny.gov/main/bcm/rfp.asp>)

In addition to the above, the bid must also be submitted with the following documentation:

- Three (3) professional references, one of which must have been received within the past 12 months.
- A curriculum vitae
- Copy of candidate's license
- Copy of current NYS registration
- Documentation of board certification or board eligibility
- If the offeror is not an individual psychiatrist, offeror must provide proof of malpractice insurance.

During contract negotiations, awarded offerors will be required to complete the following additional forms:

- ST-220-TD *Contractor Certification* (New York State Department of Tax and Finance form)
- ST-220-CA *Contractor Certification to Covered Agency* (New York State Department of Tax and Finance form)
- AC 3271-S NYS Consultant Services – Contractors Planned Employment (Form A)
- Proof of Workers' Compensation and disability benefits coverage or *Certificate of Attestation of Exemption* from New York State Workers' Compensation Board and/or disability benefits coverage

The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

Offeror's complete name and address  
Solicitation Number  
Bid due date and time

### **3. Specifications**

#### **3.1 Eligible Bidders**

All bidders who satisfy the requirements noted in sections 3.2 through 3.5 are eligible.

Due to the nature of the requested services, locum tenen vendors and temporary staffing agencies are not eligible to bid on this procurement.

#### **3.2 Product/Service Specifications**

##### **Minimum Requirements**

The offeror must meet the following minimum requirements:

- Have a valid license to practice medicine in New York State
- Be board-certified or board-eligible in general psychiatry; preferably board-eligible or board-certified in child and adolescent psychiatry, by the American Board of Psychiatry and Neurology
- Have a satisfactory reference check

##### **Preferred Qualifications**

Please note that although not required, the preferred candidate will have one (1) year of professional experience providing psychiatric services to children and adolescents as a member of the psychiatric staff of a psychiatric hospital and/or in the psychiatry department of a general hospital or in another setting, during or after general psychiatry residency. Experience working in a juvenile justice setting or with a juvenile justice population is also preferred.

##### **Duties**

As a member of the mental health team, provide direct clinical services to youth placed with OCFS, including but not limited to: completing psychiatric evaluations; prescribing and monitoring psychotropic medications for both effectiveness and side effects; obtaining informed consent; collaborating/consulting with the mental health, medical, facility, and other OCFS staff in the management and treatment of residents with mental health needs; facilitating/managing urgent mental health situations; providing

documentation of services provided; and practicing within OCFS policies, procedures, and memorandum.

### **Scope of Work**

The contractor will be expected to perform the following duties. This list may be modified at any time based on programmatic needs.

1. The psychiatrist will use standard OCFS forms for the psychiatric evaluation (1-1½ hours) and for the psychiatric follow-up visits (30 minutes).
2. The psychiatrist will order psychiatric medications and monitor their benefits and side effects.
3. The psychiatrist will attend weekly mental health rounds with clinicians, teachers, and a representative from the line staff to discuss youth in his/her caseload, as well as other youth who present with symptoms that may indicate mental health needs.
4. As outlined in the Psychiatry Manual, psychiatrists shall utilize the minimum number of medications necessary to treat target symptoms. Psychiatrists shall obtain approval from a supervising psychiatrist in instances where additional medications are deemed necessary, as outlined in the Psychiatry Manual.
5. The psychiatrist will monitor psychotropic medications as is clinically appropriate with laboratory tests, ECG and AIMS, as outlined in the Psychiatry Manual.
6. The psychiatrist will obtain informed consent from guardians.
7. The psychiatrist will conduct emergency evaluations while on the facility grounds when requested to do so. When not present at the facility, the psychiatrist will not be formally on call. Psychiatrists are asked to be available by phone to communicate with clinical or medical staff about urgent matters when practical. This is typically an infrequent event.

### **3.3 Delivery**

#### **Days of Service**

The psychiatrist(s) will work a total number of hours not to exceed 624 per year per position. It is anticipated the psychiatrist(s) will work approximately 52 hours a month. These hours should be performed during standard working hours as approved by the Supervising Psychiatrist and Assistant Director of Treatment plus any additional hours as mentioned in **Section 1.1 Overview**. The offeror(s) may divide these hours over multiple weeks per month as described in **Section 1.1 Overview**.

By submitting a bid, the offeror:

1. Understands that any candidate proposed must meet the minimum requirements and continue to meet the requirements for the duration of the contract.
2. Agrees that the candidate will perform all duties outlined above under Duties and Scope of Work.
3. Agrees that the candidate will be available for the hours set forth above in Days of Service and for the additional hours described above if they are needed. Please note that hours are not guaranteed and will be based on population need.

### **3.4 Security Procedures**

Please note that the delivery location may have security policies which must be followed. The contractor will work with OCFS to obtain necessary clearances. Contractor may be required to provide information such as, but not limited to, the company name, the employee's name (as it appears on ID), valid driver license number, vehicle make, model and license plate, etc. to gain access to the delivery location

### **3.5 Warranty (if commodity purchase)**

Contractor hereby warrants and represents that products, components or parts specified and furnished by or through contractor, whether specified and furnished individually or as a system, shall be free from defects in material and workmanship and will conform to all requirements of the contract for a minimum of N/A years from the date of acceptance.

During the product warranty period, defects in the materials or workmanship of products, components, or parts specified and furnished by or through contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by contractor at no cost or expense to OCFS contractor shall extend the product warranty period for individual products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the contractor, its agents, officers, subcontractors, distributors, resellers or employees ("extended warranty").

All warranties including in this IFB shall survive the termination of any resulting Contract.

## **4. Administrative Information**

### **4.1 Method of Award**

The preferred offeror meeting all the minimum qualifications stated above, passing vendor responsibility review and offering the lowest hourly rate for the location will be awarded a contract. A sample contract can be found at the following link: <http://ocfs.ny.gov/main/bcm/Non-Grant-Contract-Template.pdf>.

The hourly rate bid will be firm for the life of the contract. There will be no adjustment to the rate during the contract period.

In the event of a tie, offerors with the most experience (in months), providing psychiatric services to children and adolescents as a member of the psychiatric staff of a psychiatric hospital and/or in the psychiatry department of a general hospital or in another setting, during or after general psychiatry residency will be chosen.

In the event a tie still exists, each offeror with a tied score that submits a qualifying tie bid will have their name written on a piece of paper which will be placed in a hat. One offeror will be chosen at random by the selection of one of the slips of paper.

#### **4.2 Price**

Bid price must include any and all costs associated with providing and delivering the items as specified, including travel, licenses, insurance, administrative, customs, duties, charges and ancillary costs and be net F.O.B. destination. Offerors will not be reimbursed for travel time or travel costs commuting to or from the facility for which they are awarded a contract.

If a successful offeror currently has an existing psychiatric contract at the same facility, all the applicable hours from the contract with the lower pay rate will be reimbursed first when processing claims.

#### **4.3 Term of Contract**

It is the intention of the state to make an award(s) for two positions at Harriet Tubman Residential Center. The contract will commence on or about the contract date as stated in Section 1.3, subject to availability of funding, and will continue for a period of 1 year with two 1-year renewals and is subject to approval by the New York State Department of Civil Service (DCS), New York State Office of the Attorney General (OAG), New York State Office of the State Comptroller (OSC), and the relevant budget office. A copy of the terms and conditions of the contract are attached to this IFB.

#### **4.4 Method of Payment**

Payments will be processed monthly following the completion of services and upon submittal of required documentation for services performed and/or a signed claim for payment form, as directed by OCFS in the Appendix C of the resulting contract.

#### **4.5 Dispute Resolution**

It is the policy of the OCFS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations, contract awards, and contract administration. OCFS encourages vendors to seek resolution of disputes

informally, through consultation with staff, prior to commencing a formal dispute process. All such matters will be accorded impartial and timely consideration. See Section 4.26 for additional information.

#### **4.6 Contractor Responsibilities**

The contractor shall be solely responsible for all compliance with terms and conditions in this IFB or any resulting Contract. The contractor may not engage a subcontractor or dealer, distributor, reseller, or any other party to carry out any part of this contract without the prior written consent of OCFS. The contractor accepts full responsibility for the actions of any employee who carries out any of the provisions of any contract resulting from this IFB.

#### **4.7 Inspection of Books**

It is expressly understood and agreed that OCFS and OSC shall have the right to inspect and audit the contractor's records covered under this agreement, in accordance with his statutory responsibility to examine the books and accounts of every agency. OSC requires, and the contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any PO resulting from this IFB for a full three-year period or contract resulting from this IFB for a full six-year period.

#### **4.8 OCFS Reserved Rights**

OCFS reserves the right to

1. place a monetary cap on the funding amount made in each contract award;
2. change any of the schedule dates stated in this IFB;
3. reject any or all proposals received in response to the IFB;
4. withdraw the IFB at any time at the agency's sole discretion;
5. make an award under the IFB in whole or in part;
6. disqualify any offeror whose conduct and/or proposal fails to conform to the requirements of the IFB;
7. reject any proposal if, in the sole discretion of OCFS, it determines the offeror is not a responsible vendor;
8. seek clarification and revisions of proposals. Request offerors to present supplemental information clarifying their proposals either in writing or by formal presentation. New information is not permitted;

9. require that offerors demonstrate, to the satisfaction of OCFS, any feature(s) present as a part of their proposal that may include an oral presentation of their proposal and may be considered in the evaluation of the proposal;
10. prior to opening of bids, amend any part of this IFB with notification to all offerors, and direct all offerors to prepare modifications addressing IFB amendments, if necessary. Expenses incurred in the preparation of any proposals or modifications submitted in response to this IFB are the sole responsibility of the offeror or other party and will not be incurred by OCFS;
11. make funding decisions that maximize compliance with and address the outcomes identified in this IFB;
12. fund only one portion, or selected activities, of the selected offeror's proposal and/or adopt all or part of the selected offeror's proposal based on federal and state requirements;
13. eliminate any IFB requirements that cannot be met by all prospective offerors upon notice to all parties that submitted proposals;
14. waive procedural technicalities or modify minor irregularities in proposals received after notification to the offeror involved;
15. correct any arithmetic errors in any proposal or make typographical corrections to proposals with the concurrence of the offeror;
16. negotiate with the selected offeror(s) prior to contract award;
17. conduct contract negotiations or award a contract to the next highest offeror if contract negotiations with the selected offeror(s) cannot be accomplished within an acceptable time frame. No offeror will have any rights against OCFS arising from such actions;
18. award contracts to more than one offeror or to other than the lowest offeror;
19. require that all proposals be held valid for a minimum of 180 days from the closing date for receipt of proposals, unless otherwise expressly provided for in writing;
20. fund any or all of the proposals received in response to this IFB. However, issuance of this IFB does not commit OCFS to fund any proposals. OCFS can reject any proposals submitted and reserves the right to withdraw or postpone this IFB without notice and without liability to any offeror or other party for expenses incurred in the preparation of any proposals submitted in response to this IFB and may exercise these rights at any time;

21. use the proposal submitted in response to this IFB as part of an approved contract. At the time of contract development, awardees may be requested to provide additional budget and program information for the final contract;
22. utilize any and all ideas submitted in the proposals received;
23. require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements of the solicitation;
24. make additional awards based on the remaining proposals submitted in response to this IFB and/or provide additional funding to awardees if such funds become available;
25. make inquiries of third parties, including but not limited to offerors references, with regard to the applicants' experience or other matters deemed relevant to the proposal by OCFS. By submitting a proposal in response to this IFB, the applicant gives its consent to any inquiry made by OCFS;
26. require contractors to participate in a formal evaluation of the program to be developed by OCFS. Contractors may be required to collect data for these purposes. The evaluation design will maintain confidentiality of participants and recognize practical constraints of collecting this kind of information;
27. consider statewide distribution and regional distribution within New York City, including borough distribution methodology, in evaluating proposals; and
28. rescind awards for failure of awardees to meet required timeframes for contract development and/or signature.

#### **4.9 Incurred Costs**

The State of New York shall not be liable for any costs incurred by an offeror in the preparation and production of a proposal or for the contractor's participation in any pre-contract award activity. The State of New York shall not be liable for any cost incurred by the contractor in preparation for or prior to the approval of an executed contract by the OSC.

#### **4.10 Security, Nondisclosure and Confidentiality Agreement**

The content of each offeror's proposal will be held in strict confidence by the state during the bid evaluation process and will not be disclosed except to the evaluation panels, and to OAG and OSC as may be necessary to obtain the approvals of those agencies for the final Contract and except as required by law. The successful offeror's proposal and a copy of the specifications will be made a part of the contract.

Public inspection of a proposal is regulated by the Freedom of Information Law (Article 6 of the New York Public Officer's Law, hereinafter "FOIL"). Proposals are presumptively available for public inspection. If this would be unacceptable to offerors, they should apply to the Division of Budget (DOB) for trade secret protection for their bid.

Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the offeror. Marking the bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered to be sufficient without specific justification as to why disclosure of particular information in the bid would cause substantial injury to the competitive position of the offeror.

Offerors/contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

The Public Officers' Code of Ethics (Section 74 of the Public Officers Law) sets the standard that no officer or employee of a state agency shall disclose confidential information that he/she acquires during the course of his/her official duties. These standards control the confidentiality of an offeror's proposal unless DOB grants a petition for records access in accordance with the Freedom of Information Law.

Offerors should be advised that the confidentiality of their proposals is founded upon statute, as described above. A nondisclosure agreement, whether prescribed by DOB or the offeror, would not alter the rights and responsibilities of either party under the Freedom of Information Law. Offerors should not propose a nondisclosure agreement for DOB employees, for that would be legally ineffective to alter any responsibility under the Freedom of Information Law or the Code of Ethics.

The provisions of the Freedom of Information Law will also govern the confidentiality of any and all products or services supplied by the successful offeror.

Please see Content of Proposals for the [Confidentiality Non-Disclosure Agreement \(OCFS-4715\)](#), which each contractor or subcontractor, employee of a contractor or subcontractor, and volunteer with a contractor or subcontractor will be required to sign.

#### **4.11 Omnibus Procurement Act**

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as offerors, subcontractors, and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available on the internet at [www.esd.ny.gov](http://www.esd.ny.gov). For additional information and assistance, contact:

New York State Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
Email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority and women-owned business enterprises is available from:

New York State Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, New York 10017  
Telephone: 212-803-2414  
Email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com>

**NOTE:** Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the Standard Industrial Classification (SIC) code, size and location of vendors.

A directory of minority and women-owned business enterprises is available on the internet at <https://ny.newnycontracts.com>. For additional information and assistance, contact either of the above listed offices.

The Omnibus Procurement Act of 1992 requires that by signing a bid proposal, contractors certify that whenever the total offer amount is greater than \$1 million

1. the contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the state;
2. the contractor has documented their efforts to encourage the participation of New York State business enterprises as suppliers and subcontractors by showing that they have done the following:
  - Solicited offers, in a timely and adequate manner, from New York State Empire State Development business enterprises including certified minority and women-owned businesses; or
  - Contacted the New York State Empire State Development to obtain listings of New York State business enterprises and MWBEs; or
  - Placed notices for subcontractors and suppliers in newspapers, journals or other trade publications distributed in New York State; or
  - Participated in offeror outreach conferences.

If the contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made.

If the contractor does not intend to use subcontractors, the contractor shall provide a statement verifying such.

3. the contractor has complied with the federal Equal Opportunity Act of 1972 (P.L. 92-961), as amended;
4. the contractor will be required to notify New York State residents of employment opportunities through listing any such positions with Community Services Division of the New York State Department of Labor, providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The agency agrees to document these efforts and to provide said documentation to OCFS upon request;
5. offerors located in a foreign country are notified that the state may assign or otherwise transfer offset credits to third parties located in New York State, and the offerors shall be obligated to cooperate with the state in any and all respects in making such assignment or transfer, including, but not limited to, executing any and all documents deemed by the state to be necessary or desirable to effectuate such assignment or transfer, and using their best efforts to obtain the recognition and accession to such assignment or transfer by any applicable foreign government; and
6. offerors are hereby notified that state agencies and authorities are prohibited from entering into contracts with businesses whose principle place of business is located in a discriminatory jurisdiction. "Discriminatory jurisdiction" is defined as a state or political subdivision which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdiction is maintained by the commissioner of the New York State Empire State Development.

#### **4.12 Executive Order Number 38 & 177**

##### **EO#38– Limits on State-Funded Administrative Costs & Executive Compensation**

On January 18, 2012 Governor Andrew M. Cuomo issued Executive Order No. 38 "Limits on State-Funded Administrative Costs & Executive Compensation," which requires that state agencies establish limits on state reimbursement of administrative and executive compensation costs for contracts and programs that provide direct services to clients. Contracts, payment requests and reporting must comply with this Executive Order. The Executive Order can be found at the following website address:

<http://executiveorder38.ny.gov/>

Executive Order Number 38 sets Limits on State-Funded Administrative Costs & Executive Compensation. Contracts, payment requests and reporting must comply with the regulations promulgated pursuant to this Executive Order. The Order can be found at the following website address: <http://executiveorder38.ny.gov/>

**LEGAL NOTICE:** Based upon the April 8, 2014 decision in Agencies for Children's Therapy Services, Inc. v. New York State Department of Health, et al. ("ACTS"), covered providers conducting business in Nassau County need not file Executive Order No. 38 disclosures. For purposes of this notice, "conducting business" means having a place of business within Nassau County, providing program services or administrative services involving the use or receipt of state funds or state-authorized payments within Nassau County, or otherwise conducting business within Nassau County in relation to which executive compensation is paid. Please note that the ACTS decision is under appeal. Those affected by the ACTS' decision should periodically check the EO 38 website for updates regarding any changes to this notice.

### **EO#177 Prohibiting State Contracts with Entities That Support Discrimination**

Executive Order 177, signed on February 3, 2018, by Governor Andrew M. Cuomo directs New York State agencies and authorities not to enter into any contracts with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected basis. The Contractor must provide the EO 177 Certification statement found at the following website address: <http://executiveorder177.ny.gov/> prior to any award being made by OCFS.

#### **4.13 Minority and Women-Owned Business Enterprises (MWBE) – Equal Employment Opportunity (EEO) - Requirements & Procedures**

**This section outlines contractor requirements and procedures for business participation opportunities for New York State certified Minority and Women-Owned Business Enterprises (MWBE), and Equal Employment Opportunities (EEO) for minority group members and women. All forms can be found [here](#).**

#### **New York State Executive Law (Article 15-A)**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations OCFS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OCFS contracts.

#### **MWBE Business Participation Opportunities – OCFS-Established Goals**

For purposes of this solicitation, OCFS hereby establishes an overall goal of **30%** for MWBE participation, **15%** for New York State-certified Minority-owned Business Enterprise (“MBE”) participation and **15%** for New York State-certified Women-owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that OCFS may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how OCFS will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

### **Contract Compliance**

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and OCFS may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting OCFS.

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OCFS for review and approval.

OCFS will review the submitted MWBE Utilization Plan and advise the respondent of OCFS acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCFS a written remedy in response to the notice of deficiency to [mwbeinfo@ocfs.ny.gov](mailto:mwbeinfo@ocfs.ny.gov). If the written remedy that is submitted is not timely or is found by OCFS to be inadequate, OCFS shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

OCFS may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan.
- b) If a respondent fails to submit a written remedy to a notice of deficiency.
- c) If a respondent fails to submit a request for waiver.
- d) If OCFS determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to OCFS, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance & Payment Report to OCFS, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity (EEO) Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions of Appendix A – Standard Clauses for All New York State Contracts including Clause 12 - Equal Employment Opportunities for Minorities and Women]. The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading,

demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit [OCFS-3460, Minority and Women-owned Business Enterprises \(MWBE\) and Equal Employment Opportunity Policy Statement](#), to OCFS with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by OCFS on a quarterly basis during the term of the Contract.

Pursuant to Executive Order No. 162, non-grant contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other state and federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

#### **4.14 Service-Disabled Veteran Owned Business (SDVOB)**

[The Service-Disabled Veteran-Owned Business Act](#), signed into law by Governor Andrew M. Cuomo on May 12, 2014, allows eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business (SDVOB) in order to increase the participation of such businesses in New York State's contracting opportunities. The SDVOB Act, which is codified under Article 17-B of the Executive Law, acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Therefore, and consistent with its Master Goal Plan, OCFS strongly encourages vendors who contract with OCFS to consider the utilization of certified SDVOBs, that are responsible and responsive, for at least six percent (6%) of discretionary non-personnel service spending in the fulfillment of the requirements of their contracts with OCFS. Such partnering may include utilizing certified SDVOBs as subcontractors, suppliers, protégés,

or in other supporting roles to the maximum extent practical, and consistent with the legal requirements of the State Finance Law and the Executive Law. Certified SDVOBs may be readily identified through the directory of certified businesses at:

<https://online.ogs.ny.gov/SDVOB/search>

For additional information relating to the use of certified SDVOBs in contract performance, and participation by SDVOBs with respect to State Contracts through Set Asides, please refer to the following:

- [Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance](#)
- [Participation by Service-Disabled Veterans with Respect to State Contracts Through Set Asides](#)
- <http://ogs.ny.gov/Core/SDVOBA.asp>

#### **4.15 Anti-Kickback Act**

The contractor understands that it must comply with federal Executive Order No. 11246, the Copeland “Anti-Kickback Act” (18 USC 874), Section 508 of the federal *Clean Air Act*, Section 306 of the federal Clean Water Act, and that it must certify that neither it nor its principals are debarred or suspended from federal financial assistance programs and activities and to complete and return in pursuit of such certification any appropriate form required by the state (see federal Executive Order No. 12549 and 7 CFR Part 3017).

#### **4.16 Contractor Responsibility**

In the event the selected offeror’s proposal includes services provided by another firm, it shall be mandatory for the selected offeror to assume full responsibility for the delivery for such items offered in the proposal. Should the selected offeror seek external financing, the state reserves the right to approve the assignment of the contract for financing purposes. In any event, the state will contract only with an offeror, not the offeror’s financing institution or subcontractors. The state shall consider the selected offeror to be the sole responsible contact with regard to all provisions of the contract resulting from this IFB. Should an offeror wish to subcontract its responsibilities under this solicitation, OCFS requests that the prime contractor/vendor obtain approval.

#### **4.17 Multi-Agency Use**

The contract entered into pursuant to an award resulting from this IFB shall contain a provision which grants the option to extend the terms and conditions of such contract to any other state agency in New York State.

#### **4.18 Contacts with Employees**

1. From the issuance of this Invitation for Bid (IFB), or upon the posting of it on a governmental entity’s website, in a newspaper, or in the procurement opportunities newsletter, whichever is earlier, until final contract awards have been made and approved, all contact with OCFS personnel, except as otherwise specified herein,

- concerning this IFB must be made through the contact provided for on the cover page of this IFB with the bid name in the subject line.
2. All questions and requests for clarification of this IFB should cite the particular IFB section and paragraph number and must be submitted via email no later than the Deadline for Submission of Written Questions specified below. Questions received after the deadline will not be answered.
  3. Prospective offerors shall not approach state personnel with offers of employment during the procurement period or risk being disqualified from the procurement. Any offeror who is aware of a state employee who is considering employment with the offeror must advise the state forthwith.

#### **4.19 Procurement Lobbying Act**

Pursuant to State Finance Law §§139-j and 139-k, this procurement imposes certain restrictions on communications between the State and a vendor during the procurement process. Vendors are restricted from making oral, written or electronic contacts with New York State employees until OSC contract approval, other than to the point of contact as identified above. Statutory exceptions to vendor contact with other than the designated point of contact are listed below:

1. Submission of a written proposal in response to this procurement
2. Submission of written questions prior to the proposal due date (note: the PLA does not allow the hiring manager to schedule interviews)
3. Complaints filed by a vendor stating that the designated point of contact has failed to respond in a timely manner
4. Negotiations following task order award
5. Debriefings to vendors that were not award recipients
6. Filing of an appeal or protest

New York State employees other than the designated point of contact who are contacted by a vendor are required to obtain and record certain information when contacted that could result in a finding of non-responsibility against the vendor. Such a finding can result in a rejection of a task order award and in the event of two findings within a four-year period, the vendor would become debarred from obtaining New York State contracts. Further information about these requirements can be found at <http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The *Procurement Lobbying Act* also requires that every procurement over \$15,000 include a certification by the vendor that all information provided to the agency is complete, true, and accurate with regard to prior non-responsibility determinations within the past four years based on (i) impermissible contacts or other violations of State Finance Law Section 139-j, or (ii) the intentional provision of false or incomplete information to a governmental entity. See [OCFS-4822, Procurement Lobbying Act – Offeror Certification Form](#) in the ADMINISTRATIVE INFORMATION, Content of Proposals Section of this IFB.

The state reserves the right to terminate the award resulting from this procurement in the event it is found that the certification filed by the offeror in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the state may exercise its termination right by providing written notification to the award recipient.

#### **4.20 Public Officers Law**

All offerors and their employees must be aware of and comply with the requirements of the New York State Public Officers Law, and all other appropriate provisions of New York State law and all resultant codes, rules and regulations from state laws establishing the standards for business and professional activities of state employees and governing the conduct of employees of firms, associations and corporations in business with the state. In signing the proposal, each offeror guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales, contracts, services, offers, relationships, etc. involving the state and/or state employees. Failure to comply with those provisions may result in disqualification from the bidding process and in other civil or criminal proceedings as required by law [http://www.tenant.net/Other\\_Laws/Pubofc/puboftoc.html](http://www.tenant.net/Other_Laws/Pubofc/puboftoc.html).

#### **4.21 Vendor Responsibility**

New York State Finance Law requires that state agencies award contracts to responsible contractors, including but not limited to not-for-profit and for-profit vendors. Vendor responsibility will be determined based on the information provided by the offeror online through the New York State VendRep system questionnaire, or through a paper copy of the vendor responsibility questionnaire. OCFS will review the information provided before making an award.

OCFS reserves the right to reject any proposal, if in the sole discretion, it determines the offeror is not a responsible vendor, or is not, or may not be, during the life of the contract, a stable financial entity. All proposals are subject to vendor responsibility determination before the award is made, and such determination can be revisited at any point up to the final approval of the contract by OSC.

Enrolling and completing the questionnaire online through the New York State VendRep system is the best method because both the questionnaire and answers are stored in the system. Thus, subsequent questionnaires in response to contracts or solicitations from any state agency would only need to be updated in the system.

To access or enroll in the VendRep system, or update your existing online questionnaire click here: [Online Questionnaire](#). Questionnaires in the VendRep system that have been completed in the last six months in response to contracts or bid announcements do not need to be updated. If the vendor is using the hard copy notarized questionnaire, then it also has to be current within six months of the due date of the proposal.

Vendors opting to complete a paper questionnaire, can access the questionnaire by clicking the following link: [Paper Questionnaire](#). Please note that there are separate vendor responsibility questionnaires depending on the contractor status. The *Vendor Responsibility Questionnaire – Not-for-Profit Business Entity* form must be used by not-for-profit vendors. The *Vendor Responsibility Questionnaire – For-Profit Business Entity* form must be used by for-profit vendors.

Vendors are also encouraged to have subcontractors file the required vendor responsibility questionnaire online through the New York State VendRep system. These subcontractors are required to submit a questionnaire when the value of the subcontract is \$100,000 or more.

Prior to executing a subcontract agreement, the contractor needs to agree to provide the information required by OCFS, to determine whether a proposed subcontractor is a responsible vendor.

Vendors must provide their New York State vendor identification number when enrolling. To request assignment of a vendor identification number or for direct VendRep system user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.ny.gov](mailto:ciohelpdesk@osc.ny.gov).

The New York State VendRep system offers the following benefits:

- Ease of completion, filing, access to and submission of the questionnaire. Efficiencies are multiplied for vendors who bid and contract with the state frequently or with multiple state agencies.
- Questionnaire updates are easily filed by updating only those responses that require change from the previously saved questionnaire (as opposed to a paper copy where a new questionnaire is required each time there is a change).
- The stored questionnaire information eliminates the need to re-enter data for each subsequent questionnaire submission.
- Reduction of costs associated with paper documents including copying, delivery and filing
- Online questionnaire information is secure and accessible to authorized vendor users only. State agencies can only view certified and finalized questionnaires.
- VendRep question prompts ensure that the correct forms are completed.
- The VendRep online system contains links to all definitions of the terms used in the questionnaire.

**Note:** All vendor responsibility questionnaires must be dated within six months of the proposal due date. Any subcontractors under that proposed contract must also complete a vendor responsibility questionnaire when the value of the subcontract is projected to be \$100,000 or more for the contract term.

#### **4.22 Workers' Compensation Law**

New York State Workers' Compensation Law (WCL) and Section 142 of the State Finance Law requires that businesses contracting with New York State HAVE and MAINTAIN workers' compensation and disability insurances. In the event that an award is made from this IFB, updated proof of coverage must be submitted during contract development. Failure to submit the proof will delay the contract development process. Please note that the OSC has determined that municipalities are not required to show proof of coverage.

##### **Proof of Workers' Compensation Coverage**

To comply with coverage provisions of the WCL, the Workers' Compensation Board requires that a business seeking to enter into a state contract submit appropriate proof of coverage to the state contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain ONE of the following forms from the contractor and submit to OSC to prove the contractor has appropriate workers' compensation insurance coverage. The forms can be accessed at: <http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

- **Form C-105.2** – *Certificate of Workers' Compensation Insurance* issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund; or
- **Form SI-12** – *Certificate of Workers' Compensation Self-Insurance*; or **Form GSI-105.2**, *Certificate of Participation in Workers' Compensation Group Self-Insurance*; or
- **CE-200** – *Certificate of Attestation of Exemption* from New York State Workers' Compensation and/or disability benefits coverage.

##### **Proof of Disability Benefits Coverage**

To comply with coverage provisions of the WCL regarding disability benefits, the Workers' Compensation Board requires that a business seeking to enter into a state contract must submit appropriate proof of coverage to the state contracting entity issuing the contract. For each new contract or contract renewal, the contracting entity must obtain one of the following forms from the contractor and submit to OSC to prove the contractor has appropriate disability benefits insurance coverage. The forms can be accessed at: <http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

- **Form DB-120.1** - *Certificate of Disability Benefits Insurance*; or
- **Form DB-155** - *Certificate of Disability Benefits Self-Insurance*; or
- **CE-200** – *Certificate of Attestation of Exemption* from New York State Workers' Compensation and/or disability benefits coverage.

#### **4.23 New York State Sales and Compensating Use Taxes**

Tax Law Section 5-a, which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004, imposes upon certain contractors the obligation to certify whether or not the contractor and its affiliates are required to register to collect state sales and

compensating use tax. Where required to register, the contractor must also certify that it is, in fact, registered with the New York State Department of Taxation and Finance (DTF). The law prohibits the OCS or other approving agency from approving a contract awarded to an offeror meeting the registration requirements but who is not so registered in accordance with the law.

Pursuant to Tax Law Section 5-a, the contractor, upon award, will be required to complete and sign, under penalty of perjury, the *Contractor Certification* form [ST-220-TD](#) and the *Contractor Certification to Covered Agency* form, [ST-220-CA](#). The contractor must also submit a copy of the certificate of authority, if available, for itself and any affiliates required to register to collect state sales and compensating use tax. If certificates of authority are unavailable, the contractor, affiliate, subcontractor or affiliate of subcontractor must represent that it is registered and that it has confirmed such status with DTF.

The above-noted ST-220-TD and ST-220-CA forms, and additional information regarding New York State Sales and Compensating Use Taxes can be found at the following websites:

Publication 223

<http://www.tax.ny.gov/pdf/publications/sales/pub223.pdf>

ST-220-CA

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

ST-220-TD

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf)

<https://www.tax.ny.gov/default.htm>

#### **4.24 Contractor Employee and Volunteer Background/Confidentiality Non-Disclosure Agreement Forms**

OCFS is responsible for maintaining the safety of the youth in its care. State law requires that any client identifiable information be kept confidential. Any contractor who will provide goods and/or services to a residential facility or programs operated by OCFS must require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of OCFS to complete and sign the [Contractor Employee and Volunteer Background Certification \(OCFS-4716\)](#) and [Confidentiality Non-Disclosure Agreement \(OCFS-4715\)](#) forms. These forms must be completed before any such employees and/or volunteers are permitted access to youth in care or custody of OCFS, and/or any financial and/or client identifiable information concerning such youth. **The forms should be completed after the offeror has been awarded funding and during the contract development.** For additional information see Appendix A-1, Section 7b, [Confidentiality and Protection of Human Subjects](#).

#### **4.25 Consultant Disclosure Requirements**

Chapter 10 of the Laws of 2006 requires collection and reporting of consulting services contracts by New York State vendors and state agencies during the April 1 through March 31 State Fiscal Year. The Law took effect June 19, 2006.

- **Initial Report Requirements**

State contractors are required to disclose by employment category, the number of persons projected to be employed who will provide services under a contract for consulting services, the number of hours that they will work, and the amount they will be paid working under the state contract. This will include information on any persons working under any subcontracts with the state contractor.

To comply with these reporting requirements, state contractors must complete and submit form [AC 3271-S NYS Consultant Services – Contractors Planned Employment \(Form A\)](#) to their OCFS contract manager with applicable contract documents.

- **Annual Report Requirements**

State contractors must also report each year on the actual employment information described above, including work performed by subcontractors. The report must include employment information for the period ending March 31<sup>st</sup> of each year. To comply with the annual reporting requirement, state contractors must complete form [AC 3272-S NYS Consultant Services – Contractors Annual Employment \(Form B\)](#). The form must be submitted by April 30<sup>th</sup> of each year to the following offices:

Bureau of Contract Management  
New York State Office of Children and Family Services  
52 Washington Street, South Building, Room 202  
Rensselaer, New York 12144

New York State Office of the State Comptroller  
Bureau of Contracts  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236  
Attn: Consultant Reporting

New York State Department of Civil Service  
Alfred E. Smith Office Building  
Counsel's Office, 8<sup>th</sup> Floor  
80 South Swan Street  
Albany, New York 12239

#### **4.26 OCFS Procedure for Handling Debriefing Requests, Formal Protests and Appeals**

##### **Section 1: Applicability**

The intent and purpose of these procedures is to define the debriefing process, as well as the protest and appeal procedures. This includes the steps that must be taken when an interested party challenges a contract award by OCFS. These procedures shall apply to all contract awards made by OCFS.

## **Section 2: Definitions**

1. **“Interested party”** shall mean a participant in the procurement process and those whose participation in the procurement process has been foreclosed by OCFS.
2. **“Contract award”** shall mean a written determination from OCFS to an offeror, indicating that OCFS has accepted the offeror’s bid or offer.
3. **“Debriefing”** shall mean the practice whereby, upon request of a offeror, OCFS advises such offeror of the reasons why its bid was not selected for an award. It is viewed as a learning process for the offeror to be better prepared to participate in future procurements
4. **“Formal Protest”** shall mean a written challenge to a contract award by OCFS.
5. **“Procurement”** shall mean any method used to solicit or establish a contract (i.e., invitation for bid, request for proposal, single/sole source, etc.)
6. **“Protesting party”** is the party who is filing a protest to the bid, contract award or other aspect of procurement.
7. **“Formal protest determination”** shall mean the determination of a formal protest by the associate commissioner for financial management of OCFS or his or her designee.
8. **“Decision after appeal”** shall mean the decision on the appeal of a formal protest by the executive deputy commissioner of OCFS or his or her designee.

## **Section 3: Debriefing Request**

In accordance with section 163 of the State Finance Law, OCFS must, upon request, provide a debriefing to any unsuccessful offeror that responded to the IFB, regarding the reasons that the proposal or bid submitted by the unsuccessful offeror was not selected for an award.

1. OCFS will provide notice in writing or electronically to all unsuccessful offerors that the offeror will not receive an award under the IFB. An unsuccessful offeror wanting a debriefing must request a debriefing in writing, within fifteen calendar days of receipt of the notice from OCFS that the offeror's proposal did not result in an award.
2. OCFS, upon receipt of a timely written request from the unsuccessful offeror, will schedule the debriefing to occur within a reasonable period of time following the receipt of such request. Debriefings will be conducted in-person, unless OCFS and the offeror mutually agree to utilize other means, including, but not limited to, telephone, video-conferencing or other types of electronic communications. p
3. Such debriefing will include: (A) the reasons that the proposal, bid or offer submitted by the unsuccessful offeror was not selected for an award; (B) the qualitative and quantitative analysis employed by OCFS in assessing the relative merits of the

proposals, bids or offers; (C) the application of the selection criteria to the unsuccessful offeror's proposal; and (D) when the debriefing is held after the final award, the reasons for the selection of the winning proposal, bid or offer. The debriefing will also provide, to the extent practicable, general advice and guidance to the unsuccessful offeror concerning potential ways that their future proposals, bids or offers could be more responsive.

#### **Section 4: Formal Protest and Appeal Procedure**

Any interested party who believes that there are errors or omissions in the procurement process, who believes they have been aggrieved in the drafting or issuance of a bid solicitation or who believes they have been treated unfairly in the application, evaluation, bid award, or contract award phases of the procurement, may present a formal protest to OCFS and request administrative relief concerning such action.

##### **A. Submission of Bid or Award Protests**

###### **1. Deadline for Submission**

- a. Concerning Alleged Errors, Omissions or Prejudice in the Bid Specifications or Documents: Formal protests that concern alleged errors in the drafting of bid specifications must be received by OCFS at least ten (10) calendar days before the date set in the solicitation for receipt of bids.
- b. Concerning Proposed Contract Award: Formal protests concerning a pending contract award must be received within five (5) business days after the protesting party knows or should have known of the facts that constitute the basis of the formal protest. Formal protests will not be accepted by OCFS concerning a contract award after the contract between OCFS and the offeror who received the contract award has been approved by OSC.

##### **B. Review and Formal Protest Determination**

1. Formal protests must be filed with the OCFS associate commissioner for financial management. Any protests filed with the OCFS program division responsible for the procurement will be forwarded to the associate commissioner for financial management. Copies of all formal protests will be provided by the associate commissioner for financial management to the OCFS Division of Legal Affairs and other necessary parties within OCFS, as determined by the associate commissioner for financial management.
2. Formal protests shall be resolved through written correspondence; however, either the protesting party or OCFS may request a meeting to discuss a formal protest. Where further formal resolution is required, the program division responsible for the procurement may designate a state employee not involved in the procurement

("designee") to determine and undertake the initial attempted resolution or settlement of any formal protest.

3. The OCFS program division responsible for the procurement will conduct a review of the records involved in the formal protest, and provide a memorandum to the associate commissioner for Financial Management or the associate commissioner's designee summarizing the facts, an analysis of the substance of the protest, and a preliminary recommendation including: (a) an evaluation of the findings and recommendations, (b) the materials presented by the protesting party and/or any materials required of or submitted by other offerors, (c) the results of any consultation with the OCFS Division of Legal Affairs, and (d) a draft response to the formal protest.
4. The OCFS associate commissioner for financial management or his or her designee shall hear and make a formal protest determination on all formal protests. A copy of the formal protest determination, stating the reason(s) upon which it is based and informing the protesting party of the right to appeal an unfavorable decision to the OCFS executive deputy commissioner, shall be sent to the protesting party or its agent within thirty (30) business days of receipt of the formal protest, except that upon notice to the protesting party such period may be extended by OCFS. The formal protest determination will be recorded and included in the procurement record, or otherwise forwarded to the OSC.

#### C. Appeal of Formal Protest Determination

1. If the protesting party is not satisfied with the formal protest determination, the protesting party **must** submit a written notice of appeal to the executive deputy commissioner of OCFS no more than fifteen (15) business days after the date the formal protest determination is sent to the protesting party.
2. The executive deputy commissioner or his or her designee shall hear and make a decision after appeal on all appeals.
3. An appeal may not introduce new facts unless responding to facts or issues unknown to the protesting party prior to the formal protest determination.

#### D. Reservation of Rights and Responsibilities of OCFS

1. OCFS reserves the right to waive or extend the time requirements for protest submissions, decisions and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the state.
2. If OCFS determines that there are compelling circumstances, including the need to proceed immediately with contract award and development of final contracts in the best interests of the state, then these protest procedures may be suspended and such determination shall be documented in the procurement record.

3. OCFS will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action, including solicitation of bids, or withdraw the recommendation of contract award prior to issuance of a formal protest decision.
4. OCFS will continue procurement and contract award activity prior to the formal protest determination. The receipt of a formal protest will not stop action on the procurement and award of the contract(s) or on development of final contracts.
  - a. The procurement record and awarded contract(s) will be forwarded to OSC, and a notice of the receipt of a formal protest and any appeal will be included in the procurement record. If a formal protest determination, or a decision after appeal, has been reached prior to transmittal of the procurement record and the contract(s) to OSC, a copy of the formal protest determination or decision after appeal will be included in the procurement record and with the contract(s).
  - b. If a formal protest determination or decision after appeal is made after the transmittal of the procurement record and contract(s) to OSC, but prior to OSC approval, a copy of the formal protest determination or decision after appeal will be forwarded to OSC when issued, along with a letter either: a) confirming the original OCFS recommendation for award(s); b) modifying the proposed award recommendation; or c) withdrawing the original award recommendation.
5. All records related to formal protests and appeals shall be retained for at least one (1) year following resolution of the formal protest. All other records concerning the procurement shall be retained according to the applicable requirements for records retention.

## **Section 5: Appeal to the Office of the State Comptroller**

If the protesting party is still not satisfied with the result of its protest after conclusion of the formal protest and appeal procedure described above, the protesting party *must* file a written appeal with the OSC within ten business days of the date the protesting party received OCFS's protest determination. An appeal to the OSC, Bureau of Contracts, must be in writing and must contain the specific factual and/or legal allegations setting forth the basis upon which the protesting party challenges the contract award by OCFS. Such appeal must be filed with the director of the bureau of contracts at the New York State Office of the State Comptroller, 110 State St, Albany NY, 12210

### **4.27 Standard Contract Language**

The terms and conditions can be viewed [online by clicking on this link and are hereby incorporated into this IFB](#). By applying to this IFB offerers agree that they have reviewed and understand the contract terms and conditions. Contracts awarded under this IFB must be approved by the New York State Office of the Attorney General (OAG) and the

New York State Office of the State Comptroller (OSC) before any payments are made on such contracts. Contractor obligations or expenditures prior to the contract start date shall not be reimbursed. Upon contract award and completion of negotiations, OCFS will send successful awardee(s) the complete contract for development and signature prior to submitting it to the OAG and to OSC for approval.

#### **4.28 Appendix A - Standard Clauses for NYS Contracts**

The offerer has read, understands, and accepts all provisions of Appendix A – Standard Clauses for NYS Contracts. Appendix A contains important information related to the contract to be entered into as a result of this IFB and will be incorporated, without change or amendment, into the contract entered into between OCFS and the selected offerer. By submitting a response to the IFB, the Proposer agrees to comply with all the provisions of Appendix A. Please review the sample non-grant contract template, which includes the Appendix A, available at <https://ocfs.ny.gov/main/bcm/grantawards.asp>.

#### **5. Contract Documents**

The contract documents consist of the documents listed below.

1. Face Page
2. OCFS Agreement
3. Signatory Page
4. Appendix A
5. Appendix A-1 (Standard Clauses for all OCFS Contracts)
6. Appendix A3 (Federal language, when applicable)
7. Appendix B: Budget and Instructions
8. Appendix C: Payment and Reporting Schedule
9. Appendix D: Work Plan
10. Appendix HIPPA (when applicable)
11. Appendix MWBE
12. Appendix X

This sample contract is located in the on the **OCFS website** at the following link: <http://ocfs.ny.gov/main/bcm/Non-Grant-Contract-Template.pdf>