



**Office of Children
and Family Services**

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Governor

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

INVITATION FOR BIDS

IFB # 1038

Statewide Chef Services Consultant

Issued: 4/10/2020

BID DUE DATE: 5/27/2020 by 4:00 p.m. Eastern Time

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1. Introduction

1.1 Overview

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 one (1) contractor to provide chef and nutritional services for juvenile delinquent youth and youthful offenders residing at Finger Lakes Residential Center, Harriet Tubman Residential Center, Highland Residential Center, Industry Residential Center, Taberg Residential Center for Girls, Brentwood Residential Center, Red Hook Residential Center, Brookwood Secure Center, Columbia Girls Secure Center, Goshen Secure Center and MacCormick Secure Center. The lowest cost qualified provider will be awarded the contract.

There is one position available for a Contract Chef for all NYS OCFS facilities statewide. It is anticipated that the awarded position will provide the required services not to exceed 1,820 hours annually, wherein the Contract Chef will be responsible for facility-based kitchen oversight. This includes, but not limited to, menu/recipe development, site visit audits, reports, purchasing, and staff training. The awarded position will be required to work directly with youth.

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. The majority of these youth range in age from fourteen (14) to eighteen (18) years old. Approximately sixty-five (65) percent are African American, twenty-five (25) percent are Hispanic, and about 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 facilities for which services are being sought:

LIMITED SECURE FACILITIES

Finger Lakes Residential Center is located at 250 Auburn Road, Lansing, NY 14882. Finger Lakes Residential Center (FLRC) is located seven miles north of the city of Ithaca. Youth are in a one-story building with eight units. Individual units contain a large multi-purpose area and connect to a classroom that can be used as program space evenings and weekends. Each unit opens to the main area that contains additional classrooms, vocational shops, a kitchen area and central dining. The youth served at FLRC are male, adjudicated juvenile delinquents, generally between the ages of 13 and 18, placed with OCFS by the Family Court.

Harriet Tubman Residential Center is located at 6706 Pine Ridge Road, Auburn, NY 13021. The Harriet Tubman Residential Center (HTRC) is located in Auburn, New York. The main building has two living units, two classrooms, a medical unit, and a cafeteria that connects the living units and is used for meals and daily culinary arts programs. The living units contain a large, multi-purpose area that is used for programs on evenings and weekends. A second building contains a gymnasium and a large room holding a library and a computer lab. The campus design includes the latest security and safety measures and open, spacious areas for the optimal supervision and comfort of youth. The youth served at HTRC are females adjudicated and placed with OCFS by the Family Court. They are generally 16-17 years old.

Highland Residential Center is located at 629 North Chodikee Lake Road, Highland, NY 12528. Highland Residential Center is located in the Hudson Valley region of New York State, approximately nine miles from Poughkeepsie on the west side of the Hudson River. It is accredited by the American Correctional Association. Youth are in five residential buildings. There are four educational buildings on the Highland campus. The youth served at Highland are male, juvenile delinquents between the ages of 13 and 18 placed with OCFS by New York State Family Courts.

Industry Residential Center is located at 375 Rush-Scottsville Road, Rush, NY 14543. Industry Residential Center (IRC) is located 16 miles south of Rochester, New York, and is accredited by the American Correctional Association. It consists of two campuses known as Upper Campus and Lower Campus. Upper Campus is an 80-bed facility which houses 'Raise the Age' youth. Lower Campus is a 50-bed facility that houses youth adjudicated before the age of 16. Youth are in modern, single-story units. The individual units have a large multi-purpose area that can be used as program space in the evenings and on the weekends. Each campus has a separate education building and several vocational shops, outdoor recreation fields, and gardens. The youth served at IRC are male, adjudicated, juvenile delinquents who are placed with OCFS by Family Court.

Taberg Residential Center for Girls is located at 10011 Taberg-Florence Road, Taberg, NY 13471. Taberg Residential Center for Girls is located in the central region of New York State, northwest of the City of Rome. The campus is comprised of three buildings. The main building houses two living units, administrative offices, a medical unit and dining area. An adjacent building contains a gymnasium, a T.V and game-center and offices. An annex contains classrooms, a library, computer learning center, educational workstation, cafeteria, incentive activity center, training center, medical unit and conference room. The youth served are adjudicated juvenile delinquents generally between the ages of 13 and 18, who have been placed with OCFS by New York State Family Courts. Depending upon a youth's sentence and productivity these youth may remain in OCFS custody up to the age of 18. This facility is accredited by the American Correctional Association.

NON-SECURE FACILITIES (NON-COMMUNITY BASED)

Brentwood Residential Center is located at 1230 Commack Road, Dix Hills, NY 11746-8215. Brentwood Residential Center for Girls is located in the central Long Island community of Dix Hills, New York. The 40-acre campus includes two buildings, a softball field, running track and picnic area. The main building houses the living unit, dining area, classroom and administrative offices. A second building contains a gymnasium, additional classroom and offices. The youth served are female, adjudicated juvenile delinquents, generally between the ages of 12 and 18, placed with OCFS by New York State Family Courts. This facility is accredited by the American Correctional Association.

Red Hook Residential Center is located at 531 Turkey Hill Road, Red Hook, NY 12571. Red Hook Residential Center is located in Dutchess County, approximately 26 miles north of the city of Poughkeepsie. The campus has a main building consisting of two living units, medical department, classrooms, library, kitchen and dining area. A second building has a full gymnasium, conference room and administrative offices. The campus also contains a swimming pool. The youth served at RHRC are adjudicated males, generally between the ages of 12 and 18 who have been placed with OCFS by the New York State Family Courts. In addition to a focus on trauma-informed care, RHRC is also known throughout the state for its ability to work effectively with gay, bisexual, transgender and questioning youth.

SECURE FACILITIES

Brookwood Secure Center is located at 419 Spookrock Road, P.O. Box 265, Claverack, NY 12513. Brookwood Secure Center is in the Hudson Valley region of New York State, southeast of the City of Hudson. The youth served at Brookwood are male juvenile offenders who, while under the age of 16, committed certain violent felonies and were convicted and sentenced in adult criminal court. Depending upon the sentence, youth may remain in OCFS custody up to 21 years of age.

Columbia Girls Secure Center is located at P.O. Box 265, 419 Spook Rock Road, Claverack, NY 12513. Columbia Secure Center for Girls is located in the Hudson Valley region of New York State, southeast of the City of Hudson. There are two connected living units on campus -- Opportunity Wing and Liberty Wing -- each housing a maximum of eight youth. The living units are connected to a dining hall, kitchen, education and medical area and administration offices. A second building contains the gymnasium, library and a classroom. The youth served are juvenile offenders/youth offenders who, while under the age of 16, committed certain designated felonies and were convicted and sentenced in adult criminal court. Depending upon the youth's sentence, these youth may remain in OCFS placement up to 21 years of age.

Goshen Secure Center is located at 97 Cross Road, Goshen, NY 10924. Goshen Secure Center is located approximately 50 miles northwest of New York City in Orange County, New York. Youth are in living units on four wings off a centralized building that also contains academic classrooms, vocational shops, health services, dining room and kitchen, chapel, commissary, gym and indoor recreational area. Football, soccer and baseball fields, as well as a basketball and handball court, are also on the campus. The youth served at Goshen are male, juvenile offenders who while under the age of 16 committed certain violent felonies and were convicted and sentenced in adult criminal court. Depending upon the sentence, youth may remain in OCFS custody until the age of 21.

MacCormick Secure Center is located at 300 South Road, Brooktondale, NY 14817. MacCormick Secure Center is located in the Shindagin Hollow State Forest, 15 miles east of the City of Ithaca. Youth are housed in three units connected to central classrooms and a dining and kitchen area. Each unit has a large communal area with individual bedrooms. The youth served at MacCormick are male juvenile offenders who, while under the age of 16, committed certain violent felonies and were convicted and sentenced in adult criminal court. Depending upon the sentence, youth may remain in OCFS custody up to 21 years of age.

Please see **Attachment 3 – DJJOY Facility Map** for additional information.

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 (OCFS) personnel concerning this IFB, except as otherwise specified herein, must be made via email or hard copy mailed to:

New York State Office of Children and Family Services
Attn: Bureau of Contract Management – Procurement Unit
IFB # 1038 DJJOY Statewide Chef Services Consultant

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

Email: RFP@ocfs.ny.gov. In both cases, please reference IFB # **1038**

1.3 **Calendar of Events**

The table below outlines the schedule for important action dates.

EVENT	DATE
Invitation for Bid (IFB) issued	4/10/2020
Deadline for submission of offeror questions	4/29/2020 by 4:00 p.m. Eastern Time
Responses to questions published (<i>on or about</i>)	5/8/2020
Bid due Date/Bid Opening Date	5/27/2020 by 4:00 p.m. Eastern Time
<i>Anticipated</i> Contract date	9/1/2020

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 that will be posted to both the New York State Contract Reporter website (<https://www.nyscr.ny.gov>) and OCFS public website (<https://ocfs.ny.gov/main/contracts/funding/>) 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. **Bidders must operate in accordance with all applicable laws, rules and regulations.** 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 – Procurement Unit
IFB # 1038 DJJOY Statewide Chef Services Consultant
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. Contractors may not begin to provide services before the contract start date; OCFS has no obligation to pay for services before that time. Payments cannot be made before 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 will be rejected and disqualified from award. However, 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.

Note: The Commissioner will be under no 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 the 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

Required Contents of Bid Proposal

All bid proposals must include the following:

- **OCFS-0910 Request for Bid Form**
- **Attachment 1 – Bidder’s Certified Statements**
- **Attachment 2 – References**
 - Provide three (3) professional references, one of which must have been received within the past twelve (12) months.
- **Resume of Chef Services Consultant**
 - Must demonstrate at least one (1) year of experience working with youth in Juvenile Justice setting.
 - If the offeror possesses a bachelor’s degree in Culinary Arts from an accredited school, must demonstrate at least two (2) years of experience in large scale food operations (preparing at least 600 meals per day).
 - If the offeror possesses an associate degree in Culinary Arts from an accredited school, must demonstrate at least four (4) years of experience in large scale food operations (preparing at least 600 meals per day).
- **Proof of Culinary Degree**
- [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](#) (See Section 4.12 for more information)

General Proposal Appearance

Bids must be submitted inside a sealed envelope. **Bid submissions for this procurement should only contain bid proposals for this specific funding opportunity.** Multiple bids should be submitted individually in their own separate sealed envelopes that are clearly labeled on the outside.

Bid proposals should be bound and labeled in a manner that allows pages to be easily removed, scanned, and/or added to the bid proposal. Acceptable methods include, but are not limited to, three-ring binders and binder clips. **Do not use staples or spiral wire binding. Do not attach index tabs to your bid submission documents.**

The fonts and margins used in the bid proposal should be reasonable. Twelve-point text using Arial, Times New Roman, or Calibri fonts are considered acceptable. Standard one-inch margins are recommended. It is permissible to use headers, footers, and page numbers inside the margins.

The bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a sealed package or envelope that clearly displays the following information on the outside (Please see IFB Section 2.1 Instructions for Bid Submission and Section 1.3 Calendar of Events):

Offeror's complete name and address

Solicitation number

Bid due date and time

Documents Required After Bid Submission

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 *State Consultant Services – Contractor's 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

3. Specifications

3.1 Eligible Bidders

The offeror must meet the following minimum requirements:

- Must be bidding as an individual
- Possess a degree in Culinary Arts from an accredited school:
 - a bachelor's degree with a minimum of two (2) years of experience in large scale food operation (preparing at least 600 meals per day), OR
 - an associate degree with a minimum of four (4) years of experience in large scale food operations (preparing at least 600 meals per day).
- Have at least one (1) year of experience working with youth in a Juvenile Justice setting.
- Agree to provide the required services outlined in **Section 3.2 Product/Service Specifications** and **Section 3.3 Delivery**.
- Agree to comply with all applicable rules and regulations outlined in **Section 3.4 Security Procedures** when providing services at the eleven (11) DJJOY facilities listed in **Section 1.1 Overview**.

3.2 Product/Service Specifications

Scope of Work

The awarded position will provide the required services is not to exceed 1,820 hours annually. Statewide travel is required. The awarded position will work at facilities outside of their designated home office approximately 60% of the time. As this is an hourly position, travel expenses are to be included in your bid rate and will not be reimbursed separately. This includes, but is not limited to, hotels, mileage, meals, fuel, and other vehicle/travel-related expenses. The contractor will be reimbursed for travel time from the designated home office to OCFS facilities in carrying out job related functions. Travel will be discussed and approved by the Bureau of Health Services.

The awarded position will work with and report directly to the Nutrition Service Administrator II (NSAII) located at home office in the Bureau of Health Services. The NSA II plans, develops, implements, monitors and provides oversight of the agency operated programs', diet/menu, institutional food services operations, clinical nutrition consultations for youth, and provides direct supervision of the Contracted Chef

Additional job duties include but are not limited to the following:

- Train with Nutrition Services and Administration (NSA), facility-based kitchen personnel and supervise/coordinate all related culinary activities.
- Select and develop recipes.
- Standardize production recipes to ensure consistent quality.
- Establish production levels and inventory controls.
- Plan with NSA, cycle menus.
- Implement and train on Hazard Analysis Critical Control Point (HACCP).
- Implement, with NSA, proper use of kitchen equipment operation and maintenance.
- Implement, with the NSA, proper safety and sanitation procedures in facility kitchens
- Develop, with NSA, guidelines for the purchasing of food and supplies.
- Coordinate special events, projects and provide culinary instruction and/or culinary techniques to facility kitchen staff.
- Plan and development with NSA, the Nutrition Services Unit culinary programs such as; youth gardens/fresh produce, hydroponics, and aquatics program as it relates to meal preparation and service.
- Perform facility site visit audits and reports as requested by the NSA.
- Establish facility meal presentation technique and quality standards.
- Staff training: Meal preparation (cooking from scratch), meal planning (timing of units, how much to cook), control food waste, workflow/time management, food procurement, preparation, service, and distribution.

- Food Demonstrations for both staff and youth as necessary for training and/or special programs.
- Monitor labor, quality of food, and student acceptance of menu items.
- Food contracts: Work with NSA and food contractors on ordering guides for menus.
- Assess and make recommendations and assist in the implementation of facility kitchen equipment updates and storage enhancements.

Please Note: Applicants may not subcontract any components of their scope of work.

3.3 Delivery

It is anticipated that the awarded Contract Chef will provide the required services not to exceed 1820 hours annually. These hours should be performed during scheduled working hours as approved by DJJOY administration. Please see IFB **Section 1.1 Overview** for additional information regarding services to be delivered and locations to be served.

By submitting a bid, the offeror:

1. Understands that any candidate proposed must meet the minimum requirements in **Section 3.1 Eligible Bidders** and must continue to meet the requirements for the duration of the contract.
2. Agrees that the candidate must perform all duties outlined in **Section 3.2 Product/Service Specifications** under Duties in the Scope of Work.
3. Agrees that the candidate will provide services at any or all of the eleven (11) DJJOY facilities listed in **Section 1.1 Overview** as directed by OCFS. Please also refer to **Attachment 3 – DJJOY Facility Map** for additional information.
4. Agrees that the candidate must be available for the hours set forth above in Sections 1.1 Overview Days of Service and the additional hours described above if they are needed.

Please Note: Hours are not guaranteed and will be based on population need.

3.4 Security Procedures

Any person(s) bringing contraband items into the facility may be subject to contract termination and/or arrest in accordance with OCFS policy and any applicable laws, rules, or regulations. A summary of applicable OCFS policies and procedures will be provided to the awardee prior to entering any facilities.

3.5 Warranty (if commodity purchase)

Not Applicable.

4. **Administrative Information**

4.1 **Method of Award**

The bidder(s) submitting a bid in compliance with **Section 2.0 Bid Submission**, meeting requirements stated in **Section 3.0 Specifications**, passing vendor responsibility review, obtaining satisfactory reference check, and offering the lowest hourly rate will be awarded a contract.

A sample contract can be found on the OCFS website at the following link: <https://ocfs.ny.gov/main/contracts/docs/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 bid, offerors with the most culinary experience, measured in months, will be selected as the winning bidder.

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.

Per **Section 4.24, Confidentiality and Required Awardee, Contractor, Employee, and Volunteer Background Checks**, the awardee will be subject to OCFS screening and clearances, including background checks and confidentiality agreements. Failure to comply with that requirement may find the offeror non-responsive to the terms of this IFB and could result in disqualification or rescinding of the award. Please see section 4.24 of this IFB for further information.

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. Contractor will not be reimbursed for travel time or travel costs commuting to or from the facility designated as the contractor's home base. The contractor will be reimbursed for travel time from the designated home base to and from OCFS facilities in carrying out job related functions. **Travel expenses are included in your hourly bid rate and will not be reimbursed separately.** This includes, but is not limited to, hotels, mileage, meals, fuel, and other vehicle/travel-related expenses. There will be no additional compensation for holidays or overtime.

4.3 Term of Contract

It is the intention of the state to award a single contract to the awarded offeror. The contract will commence on or about the contract date as stated in **Section 1.3 Calendar of Events**, will continue for a period of five (5) years and is subject to approval by the New York State Department of Civil Service (DCS), New York State Office of the Attorney General (OAG) and Office of the State Comptroller (OSC). Contractors may not begin to provide services before the contract start date; OCFS has no obligation to pay for services rendered before that time. Payments cannot be made before the formal execution of a contract. 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 OCFS's policy 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, before 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/her 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 purchase order 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 IFB's requirements;
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. Ask 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. before opening 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) before 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 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 asked to provide additional budget and program information for the final contract;
22. use 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 regarding 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;
28. rescind awards for failure of awardees to meet required timeframes for contract development and/or signature;
29. use proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability, or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the IFB; and
30. reject any extraneous terms, alternate activities/work to be performed, added conditions, or exceptions stated by applicants within their proposal(s). This includes, but is not limited to, proposed changes to the standard terms and conditions of the resulting contract(s).

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 before 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 FOIL 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 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 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 FOIL.

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 FOIL. Offerors should not propose a nondisclosure agreement for DOB employees, for that would be legally ineffective to alter any responsibility under FOIL or the Code of Ethics.

The provisions of FOIL 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. 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

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
<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 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 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 that 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 jurisdictions is maintained by the Commissioner of 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/>

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 before 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** percent for MWBE participation, **15** percent for New York State-certified Minority-Owned Business Enterprise (“MBE”) participation and **15** percent for New York State-certified Women-Owned Business Enterprise (“WBE”) participation (based on the current availability of MBEs and WBEs). A “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. 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; or
- b) If a respondent fails to submit a written remedy to a notice of deficiency; or
- c) If a respondent fails to submit a request for waiver; or
- 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 before 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 10th 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 (6) percent** 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: [List of Certified NYS Service-Disabled Veteran-Owned Businesses.](#)

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 that 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 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 may 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 before 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 <https://ogs.ny.gov/acpl/>.

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 if it finds 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 <https://www.nysenate.gov/legislation/laws/PBO>.

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 the 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 must be current within six months of the due date of the proposal.

Vendors opting to complete a paper questionnaire, can access it here: [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.

Before 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 a vendor identification number or for direct VendRep system user assistance, contact the OSC Help Desk at 866-370-4672 or 518-408-4672 or by email at 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 changes 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 require that businesses contracting with New York State HAVE and MAINTAIN workers' compensation and disability insurances. If 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. Access the forms 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 Fund³; or
- **Form SI-12⁴** - *Certificate of Workers' Compensation Self-Insurance*; or **Form GSI-105.2⁵** *Certificate of Participation in Workers' Compensation Group Self-Insurance*; or
- **CE-200⁶** - *Certificate of Attestation of Exemption* from NYS 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-120.1³** - *Certificate of Disability Benefits Insurance*; or
- **Form DB-120.2** – *Certificate of Participation in Disability Benefits Group Insurance*; or
- **Form DB-155⁷** - *Certificate of Disability Benefits Self-Insurance*; or
- **CE-200⁶** - *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 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 registered according to 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

ST-220-TD

http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf

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

4.24 Confidentiality and Required Awardee, Contractor, Employee, and Volunteer Background Checks

OCFS is responsible for maintaining the safety of the youth served by its programs.

4.24.1 **Confidentiality** - New York State law requires that any client-identifiable information be kept confidential. Any awardee, or contractor, employee, or volunteer of the awardee, who will be provided with confidential information of recipients served by the awardee must complete and sign form OCFS-4715, [Confidentiality Non-Disclosure Agreement](#). This form must be completed before the start date of the contract and before any such awardee, contractor, employee, or volunteer is permitted access to youth served by an awardee or to any financial or client identifiable information concerning such youth. For additional information see Attachment A-1, **Section 7 Confidentiality and Protection of Human Subjects**, located at the link to a standard contract listed in section **4.27 Standard Contract Language** below.

4.24.2 **Required Awardee, Contractor, Employee, and Volunteer Background Checks** - Any awardee, or contractor, employee, or volunteer of the awardee who will have the potential for regular and substantial contact with youth in care or receiving residential services must be subject to background screening before hire or utilization in a position paid through this award. The screening must include a review of individuals' backgrounds through the following three services: New York State Justice Center for the Protection of Persons with Special Needs Staff Exclusion List (SEL), New York Statewide Central Register of Child Abuse and Maltreatment (SCR), and a criminal history background check via a vendor that will submit information to both the Division of Criminal Justice Services and the Federal Bureau of Investigation. Additional information about all three services will be provided if an award is granted. Please note that the grant of an award may be negatively impacted if background checks reveal that an individual proposed to provide services is on the SEL, is the subject of any indicated reports of child abuse and maltreatment or has convictions for one or more prior criminal offenses. Awardees are responsible for notifying OCFS if a background check reveals that a contractor, employee, or volunteer of the awardee proposed to provide services has a criminal history. OCFS will evaluate any criminal history revealed as a result of the screening pursuant to Correction Law Article 23-A, section 752, on a case-by-case basis taking into consideration the duties of the position and those factors set forth in Correction Law Article 23-A, section 753. OCFS will evaluate the results of the screening in accordance with Correction Law Article 23-A and notify the awardee of its determination. The awardee shall be responsible for the cost associated with any required background screens of the individuals identified in this section.

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. This form should include the projected employees and number of hours they will work. Instructions for completing this form can be found [here](#). A description of employment categories can be found [here](#).

- **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 of each year. To comply with the annual reporting requirement, State contractors must complete form [AC 3272-S NYS Consultant Services – Contractors Annual Employment \(Form B\)](#) and submit it by April 30 of each year to the following offices:

Kevin Sweet
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, 11th Floor
Albany, New York 12236
Attn: Consultant Reporting

New York State Department of Civil Service
ESP, Agency Building 1
19th Floor
Albany, New York 12239

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

A. 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 from OCFS. These procedures shall apply to all contract awards made by OCFS.

B. 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 offerer, indicating that OCFS has accepted the offerer's bid or offer.
3. "Debriefing" is the practice whereby, upon request of a bidder, OCFS reviews with such bidder the reasons its bid was not selected for an award. OCFS views debriefing as a learning process so that the bidder will be better prepared to participate in future procurements.
4. "Formal protest" shall mean a written challenge to an OCFS contract award.
5. "Procurement" shall mean any method used to solicit or establish a contract (e.g., 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 OCFS' deputy commissioner for administration or his or her designee.
8. "Decision after appeal" shall mean the decision on the appeal of a formal protest by OCFS' commissioner or his or her designee.

C. Debriefing Request

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

1. OCFS will provide notice in writing or electronically to all unsuccessful offerers that the offerer will not receive a funded award under the RFP. An unsuccessful offerer wanting a debriefing must request a debriefing

in writing within 15 calendar days of receiving the notice from OCFS that the offerer's proposal did not result in an award.

2. When OCFS receives a timely written request from the unsuccessful offerer, it will schedule the debriefing to occur within a reasonable period of time. Debriefings will be conducted in-person unless OCFS and the offerer mutually agree to utilize other means, including, but not limited to, telephone, video-conferencing, or other types of electronic communications.
3. Such debriefing will include: (a) the reasons that the proposal, bid, or offer submitted by the unsuccessful offerer 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 offerer'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 offerer concerning potential ways for their future proposals, bids, or offers to be more responsive.

D. Formal Protest and Appeal Procedure

Any interested party who believes that 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.

1. Submission of Bid or Award Protests

Formal protests concerning a pending contract award must be received within five business days after the protesting party knows or should have known of the facts that constitute the basis of the formal protest. OCFS will not accept formal protests concerning a contract award after the contract between OCFS and the offerer has been approved by the NYS Office of the State Comptroller (OSC).

In addition, where a debriefing was requested, a bidder may file a protest within five business days from the debriefing (in addition to the original 10-day window from notice of award).

2. Review and Formal Protest Determination

- a. Formal protests must be filed with the OCFS deputy commissioner for administration. Any protests filed with the OCFS program division responsible for the procurement will be forwarded to the deputy commissioner for administration, who will then provide copies of all formal protests to the OCFS Division of Legal Affairs and other

necessary parties within OCFS, as determined by the deputy commissioner for administration.

- b. 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.
- c. 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 deputy commissioner for administration or the deputy 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 bidders, (c) the results of any consultation with the OCFS Division of Legal Affairs, and (d) a draft response to the formal protest.
- d. The OCFS deputy commissioner for administration 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 commissioner, shall be sent to the protesting party or its agent within 30 business days of receiving the formal protest, except that upon notice to the protesting party, OCFS may extend such period. The formal protest determination will be recorded and included in the procurement record or otherwise forwarded to the OSC.

3. Appeal of Formal Protest Determination

- a. If the protesting party is not satisfied with the formal protest determination, the protesting party **must** submit a written notice of appeal to OCFS' commissioner no more than 15 business days after the date the formal protest determination is sent to the protesting party.
- b. The commissioner or his or her designee shall review the formal protest documentation and make a decision on all appeals.

- c. An appeal may not introduce new facts unless responding to facts or issues unknown to the protesting party before the formal protest determination.

4. Reservation of Rights and Responsibilities of OCFS

- a. 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.
- b. 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.
- c. 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 before issuance of a formal protest decision.
- d. Unless a determination is made to suspend, modify, or cancel the protested procurement action, or withdraw the recommendation of contract award, OCFS will continue procurement and contract award activity before the formal protest determination. Receiving a formal protest will not otherwise stop action on the procurement and award of the contract(s) or on development of final contracts.
 - i. 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 before 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).
 - ii. If a formal protest determination or decision after appeal is made after the transmittal of the procurement record and contract(s) to OSC, but before 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.

- iii. All records related to formal protests and appeals shall be retained for at least one year following resolution of the formal protest. All other records concerning the procurement shall be retained according to the applicable requirements for records retention.

E. Appeal to the Office of the State Comptroller

If the protesting party is still unsatisfied with the result of its protest after conclusion of the formal protest and appeal procedure described above, the protesting party may file a written appeal with the OSC within 10 business days of the date the protesting party received OCFS' protest determination. An appeal to the OSC's 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 NYS Office of the State Comptroller (OSC), 110 State Street, 11th Floor, Albany, NY 12236.

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 OSC before any payments are made on such contracts. Contractor obligations or expenditures before 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 before 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 offerer agrees to comply with all the provisions of Appendix A. Please review the sample non-grant contract template, which includes Appendix A, available at <https://ocfs.ny.gov/main/contracts/docs/Non-Grant-Contract-Template.pdf>.

4.29 State Finance Law §139-I; Statement on Sexual Harassment in Bids

New York State Finance Law §139-I, effective January 1, 2019, requires, in relevant part, that “[e]very bid . . . made to the state or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain [a] statement subscribed by the bidder and affirmed by such bidder as true under the penalty of perjury. . . [that] ‘[b]y submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.’” The contractor must provide the foregoing certification before any award being made by OCFS. For additional guidance on drafting an appropriate sexual harassment policy and developing appropriate training please refer to State Finance Law §139-I and <https://www.ny.gov/combating-sexual-harassment-workplace/employers#top>

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 on the **OCFS website** at the following link:
<https://ocfs.ny.gov/main/contracts/docs/Non-Grant-Contract-Template.pdf>