



**Office of Children  
and Family Services**

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Governor

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Commissioner

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

**INVITATION FOR BIDS**

**IFB # 1095**

**Replace or Repair Boiler for Building 29 and 66 at  
Industry Limited Secure Center**

**375 Rush-Scottsville Road, Rush, Monroe County, NY 14543**

**Issued: 5/5/2022**

**BID DUE DATE: 6/2/2022 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) Capital Facilities Services Bureau announces the release of this Invitation for Bids (IFB) to provide repair or replace boiler equipment; a component equipment of the space heating system for **Buildings 29 and 66 at OCFS Industry Limited Secure Center** located at **375 Rush-Scottsville Road, Rush, NY 14543** in Monroe County.

The **Base Work** is to provide the **repair** of the existing Boiler B-2 equipment (one of three boilers equipment in the heating system for buildings 29 and 66). This Base Work includes supplement and peripheral work for the replacements, corrective repair, cleaning, and/or adjustments of component system devices such as valves, vents, and controls associated with functional operations of all three boilers (B-1, B-2, and B-3).

**Alternative Work-1** is an **optional alternative** to provide the **replacement** of the existing Boiler B-2 Equipment (one of three boilers equipment in the heating system for buildings 29 and 66). This Alternative Work-1 includes supplement and peripheral work for the replacements, corrective repair, cleaning, and/or adjustments of component system devices such as valves, vents, and controls associated with functional operations of all three boilers (B-1, B-2, and B-3).

**If OCFS chooses Alternative Work-1 for the provisions of a replacement boiler with new equipment, the successful bidder is required to have the manufacturer's certified/authorized representative certify the completed installation.**

**Alternative Work-2** is an **optional additional alternative** to provide a new water softener equipment to treat water supply to all three boilers.

Due to the nature of the required service, repair, and/or corrective action, eligible responders must be located within a 40 mile-radius of the Industry Limited Secure Center.

### **Mandatory Pre-Bid Conference and Site Visit**

For eligibility to submit a bid for this work, attendance at the pre-bid conference is mandatory. The pre-bid conference will include a site visit and will be hosted at the project site as follows:

- Conference Location (also the gathering location):  
Maintenance Building, 375 Rush-Scottsville Road, Rush, NY 14543
- Date/Time:  
5/12/2022; 11:00 AM to 12:15 PM
- On-site Contact:  
Matthew VanNorman; 518-533-2674; [Matt.VanNorman@ocfs.ny.gov](mailto:Matt.VanNorman@ocfs.ny.gov)

- **Required Entry Form:**  
Submit the completed Gate Clearance Request Form (OCFS-3903) to the On-site Contact a minimum of 48 hours prior to the date of the pre-bid Conference.

Events in the pre-bid conference and mandatory site visit shall include:

- Summarized description of the existing project facility, existing heating system, and defective boiler;
- Clarification of the work scope limits;
- Clarification of the facility entry protocol, screening, and security requirements; and
- Walk-through Buildings 29 and 66 with specific focus on visual inspection of the boilers, piping, vents, controls, and electrical power connections, as well as accessibility into the mechanical room.

**Procurement documents include:**

- IFB document
- Attachment 1 – Existing Equipment Layout
- Attachment 2 – Project Facility Location Map
- Attachment 3 – Project Site Key Map
- Attachment 4 – Vendor Financial Submission Form
- Attachment 5 – Staffing Information Form
- Attachment 6 – Bidder's Certified Statements
- OCFS-0910 Request for Bid Form
- OCFS-3903 Gate Clearance Request Form

**Prevailing Wage Rate and supplemental benefit information**

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law Article 8. The applicable Prevailing Wage Rate Schedule for this project-work is PRC # 2022004416.

Assumed Prevailing Wage Rate/Hour for Boiler Mechanic/Maker, Plumber or Steamfitter = \$36.00

Supplement Benefit/Hour for Boiler Mechanic/Maker, Plumber or Steamfitter = \$31.20

Assumed Prevailing Wage Rate for Apprentice (Helper for Boiler Mechanic, Plumber or Steamfitter) = \$28.00

Assumed Prevailing Wage Rate/Hour for Electrician = \$38.00

Assumed Supplemental Benefit Rate/Hour for Electrician = \$25.00

## 1.2 **Designated Contacts**

In compliance with the Procurement Lobbying Law, from the issuance of this IFB until contractors are selected, all contacts with OCFS personnel concerning this IFB, except as otherwise specified herein, must be made via email (preferred) or hard copy mailed to:

New York State Office of Children and Family Services  
Attn: Bureau of Contract Management – Procurement Unit  
**IFB # 1095 Replace or Repair Boiler for Building 29 and 66 at Industry LSC**  
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 # 1095**.

## 1.3 **Calendar of Events**

The table below outlines the schedule for important action dates.

<b>EVENT</b>	<b>DATE</b>
IFB issued	5/5/2022
Pre-Bid Conference/Mandatory Site Visit	5/12/2022 Starting at 11:00 A.M. and ending at approximately 12:15 PM
<b>Deadline for submission of offeror questions</b>	<b>5/19/2022 by 4:00 p.m. Eastern time</b>
Responses to questions published ( <i>on or about</i> )	5/26/2022
<b>Bid due date/Bid opening date</b>	<b>6/2/2022 by 4:00 p.m. Eastern time</b>
<i>Anticipated</i> Contract start date	7/1/2022

## 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.

**All bids must be submitted Electronically by email to [RFP@ocfs.ny.gov](mailto:RFP@ocfs.ny.gov) by the Bid Due Date and time set forth in Section 1.3 – Calendar of Events.** The email subject line should include the following information: IFB # 1095 and Vendor Name. If bid requires files be sent in multiple emails, indicate the email number, e.g., 1 of 2. No facsimile or hard copy bids will be accepted. **Bid submissions for this procurement should only contain bid proposals for this specific funding opportunity and bidders should submit only one bid proposal per submission email.**

OCFS will provide a confirmation email that the bid has been received.

Electronic bids must contain the information and bid submission formats and forms requested herein, or attached hereto, under the terms and conditions of this solicitation. Bids that cannot be read, require a password (locked), or are incomplete, or that contain any omissions, erasures, alterations, additions or items not required by the IFB or that contain irregularities of any kind may be rejected. All costs associated with the preparation of a bid are the responsibility of the Bidders and cannot be charged to OCFS. Bidders may modify, in writing, the content of any bid at any time prior to the bid due date and time, however a complete re-submission of all bid documents is required. OCFS will not substitute sections of a bid. The email should state that previous bid(s) submitted are withdrawn. If this is not clear in the email, OCFS will only consider the latest bid submitted for award. Bids may be withdrawn or canceled before the bid due date and time.

Contractors may not begin to provide services prior to the contract start date; OCFS has no obligation to pay for services prior to that time. Payments cannot be made prior to the formal execution of a contract.

**Offerors assume all risks for timely, properly submitted electronic bids.**

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

Any bid or portion of a bid if bid is submitted in multiple emails that is received at the [RFP@ocfs.ny.gov](mailto:RFP@ocfs.ny.gov) email after the Bid Due Date & Time in **Section 1.3 Calendar of Events** will be considered a late bid. A late bid may be rejected and disqualified from

award. However, a late bid may be accepted in the Commissioner's sole discretion when

- (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 is 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 180 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 180 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**

Please be aware that although bids must be submitted electronically, any required bid proposal document that requires a notarization must be obtained by the bidder and a copy of the notarized form submitted with the bid. The original hardcopy signature page must be kept by the bidder. A hardcopy version of the notarized document must be supplied during the contract development stage by selected awardees if requested by OCFS.



**All bid proposals must include the following:**

- **OCFS-0910 Request for Bid Form** (completed by the vendor)
- **Vendor Profile** - Bidder must provide a short narrative summary detailing their qualifications, resources, and capabilities to provide requested services.
- **Vendor Financial Submission Form** (Attachment # 4)
- **Staffing Information Form** (Attachment # 5)
- **Bidder's Certified Statements** (Attachment #6)
- [OCFS-4822 Procurement Lobbying Act – Offeror Certification Form](#)
- [Vendor Responsibility Questionnaire For-Profit Business Entity](#) (or proof of online certification in the VendRep system)
- [OCFS-2647 EO 177 Certification](#)
- [OCFS-2634 Non-Collusive Bidding Certification](#) (Required by section 139d of State Finance Law).

Attachments to this announcement are also available for download from The New York State Contract Reporter website at <https://www.nyscr.ny.gov> or the OCFS website at <https://ocfs.ny.gov/main/contracts/funding/>.

**General Proposal Appearance**

Bid proposal emails may be submitted containing either one singular document or multiple document attachments. Document filenames are encouraged to be logical and make the attachment(s) easily identifiable. Please ensure that all document attachments provided via email are complete, correct, viewable, and comply with the requirements of the IFB. Bidders must not upload password protected documents or secured documents. **Documents that are incomplete or cannot be viewed may result in disqualification.** Ensure that all passwords are removed prior to submitting your bid proposal.

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.

Please refer to IFB **Section 2.1 Instructions for Bid Submission** and **Section 1.3 Calendar of Events**.

**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)
- 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
- [OCFS-4629, Project Staffing Plan Form](#)
- [OCFS-3460, MWBE Equal Employment Opportunity \(EEO\) Policy Statement Form](#)
- [OCFS-4631, MWBE Utilization Plan Form](#)
- Certificate of insurance policy/policies for automobiles and heavy tractors to be brought into the project site; to be included in the Certificate of Business Liability Insurance policy certificate as applicable.
- Certificate of Business Liability Insurance policy with coverages for:
  - General liability with \$1,000,000 each occurrence; \$2,000,000 aggregate limit
  - Automobile and/or heavy tractor with \$1,000,000 combined single limit
- Pollution Legal Liability Insurance (if project contains disposal of any hazardous waste)
- [AC 3271-S, State Consultant Services – Contractor's Planned Employment](#) (Form A)

### **3. Specifications**

#### **3.1 Eligible Bidders**

Eligible bidders must have primary or secondary office operations within 40-mile radius of the project site.

Designated contractor staff performing the work must have a minimum of 3 years of experience servicing, repairing, and installing Cleaver-Brooks firetube, hot water condensing boilers.

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

As component equipment in the heating system for Buildings # 29 and 66, the successful bidder shall provide labor, tools, and materials for the repair or replacement of specific equipment as follows:

- **Background information on existing heating system:**
  - The existing systems include three (3) Hydronic Condensing Boilers (B-1, B-2, and B-3). B-1 and B-2 are identical equipment; and B-3 is smaller equipment.
  - B-1 and B-2 Boiler manufacturer, type, and model: Cleaver-Brooks, firetube, hot water condensing boiler, model CFC-E2500.
- **Existing condition of the heating system:**
  - B-1 and B-3 Boilers are functioning normally.
  - B-2 Boiler is defective/damaged, not functioning, and must be repaired or replaced as an essential part of the work in this solicitation.

- **Characteristics and system components include:**
  - In-Line Pumps. *Check and adjust pumps.*
  - Triple Duty Valves. *Check and adjust valves.*
  - Exhaustion of burnt air/gases: Through vent tubes (metal ducts) routed into a multi-story chimney with discharge above roof. *Check and clean ducting for exhaust air/gas.*
  - Combustion air intake: Through existing vent. *Ducting for combustion air intake shall be checked and cleaned.*
  - Electrical power supply including conduits and wiring for pumps, control, and outside Skid/Burner. *Provide the appropriate electrical power connections from the existing shut-off switch and re-establish the boiler equipment grounding protection as necessary.*
  
- **Existing system controls:**
  - All three boilers are controlled and sequenced to operate to meet heat load demands in both buildings. *The control system shall be checked, adjusted and/or reset for normal system operations.*
  - System performance is monitored remotely in another building facility.
  
- **Optional supplemental work**
  - Install a new water softener, pumps, and control to treat water supply to all three boilers.

**If OCFS chooses Alternative Work-1 for the provisions of a replacement boiler with new equipment, the successful bidder will be required to have the manufacturer's certified/authorized representative certify the completed installation.**

The work performance shall include vendor activities, engagements, and provision of work deliverable items encompassing and as indicated:

- Workforce mobilization;
- Inspections as required by manufacturer(s) of equipment, products, systems and/or materials for validation of warranty for installation of such work-items;
- Sampling, testing, handling, and disposal of HAZMAT as indicated elsewhere in this solicitation;
- Shipping and deliveries of materials and work items and component parts to the project facility;
- On-site work performance for repairs, corrective work, installations, testing(s) and adjustments;
- Correction of performed work determined as defective;
- Correction to damage to existing facility items caused by Vendor's activities in the performance of the solicited work;
- Equipment/systems adjustments and start-up associated commissioning and operational occupancy;

- Completed work inspections and acceptance by the Facility Director's Representative as a part of the operational Occupancy (aka substantial completion of the work);
- Required documents submittals prior to commencing on-site work, including insurance certificates, MWBE participation plan and support documents, material/product literature Closeout Documents;
- Required documents submittals prior to closeout, including written workmanship warranty letter covering defective work for up to 12 months and/or manufacturer's warranty for installed equipment, products, systems, system-components, and/or material as applicable to work scope;
- Completion of workforce demobilization from the project site.

The total of all subcontracting work during the term of the contract shall not exceed 40% of the bid total value, inclusive of New York State certified MWBE firms, unless otherwise approved by the OCFS.

### **3.3 Delivery**

All work must be completed within 65 days of notice of contract approval.

The successful bidder shall provide personal protective equipment as necessary to comply with facility requirements for security, entry, and safety when performing on-site work.

During the Contract Period while performing the services for this contract, vehicular parking spaces for the contractor personnel shall be directed by the Facility Director's Representative.

Electrical power supply shall be provided at the OCFS project facility; and the successful bidder shall provide extension cords as applicable to connect existing power supply.

Temporary lighting may be necessary for brighter illumination to supplement existing ambient lighting in some areas of the project facility; and the successful bidder shall provide portable light fixtures for use as needed for better illumination.

Existing potable water supply shall be available for the successful bidder's use at the project site; and the successful bidder shall be responsible for providing water hoses and bucket containers to get water to the specific locations within the project facility as needed. Judicious/conservative use of on-site water supply is required of the Contractor.

Existing restrooms will be available for successful bidder's personnel use, and must be kept clean and in sanitized condition always.

Temporary storage of materials and equipment to be installed as part of the work shall be done by the successful bidder to protect such items from damage at a designated

location as directed by the Facilities Director's Representative. Temporary storage of tools and equipment during non-working hours shall be secured in locked container(s) to be located as directed by the Facility Director's Representative.

Successful bidder shall use care and due diligence in performing the work, reducing risk of damage of existing facility items and protect installed work.

### **3.4 Security Procedures**

Please note that the delivery location is a limited secure residential facility and has security policies that must be followed. The contractor will work with OCFS to obtain necessary clearances. The 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)**

The contractor hereby warrants and represents that products, components, or parts specified and furnished by or through the 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 1 year for services and manufacturer's warranty for parts and equipment, 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 the contractor, whether specified and furnished individually or as a system, shall be repaired or replaced by the contractor at no cost or expense to OCFS. If needed, the contractor shall extend the product warranty period for individual products or the system, by the cumulative periods of time, after notification, during which a product or the system requires repairs or replacement that results in down time or is in the possession of the contractor, its agents, officers, subcontractors, distributors, resellers or employees ("extended warranty").

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

## **4. Administrative Information**

### **4.1 Method of Award**

The offeror meeting all the minimum requirements stated above, passing vendor responsibility review and offering the lowest cost for the work selected by OCFS will be awarded a contract.

OCFS may choose to solely repair, solely replace, repair and add water softener, or replace and add water softener. In all cases the award will be made to the vendor offering the lowest cost for all work components selected.

A sample contract can be found at the following link: <http://ocfs.ny.gov/main/bcm/Non-Grant-Contract-Template.pdf>.

There will be no adjustment to the cost during the contract period.

In the event of a tie, each offeror submitting 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.

#### **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.

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

It is the intention of the state to award a single contract to the awarded bidder. The contract will commence on or about the contract date as stated in Section 1.3, will continue for a period of 6 months, and is subject to approval by the New York State Office of the Attorney General (OAG) and New York State 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. A copy of the terms and conditions of the contract are attached to this IFB.

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

Payments will be processed 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 the general requirements, 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 time frames for contract development and/or signature;
29. cancel this IFB, in whole or in part, at any time and to reject any and all bids when appropriate in the best interests of the state;
30. 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
31. 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 the New York State Office of the Attorney General and OSC, as may be necessary, to obtain their approvals 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, or FOIL). Proposals are presumptively available for public inspection. If this would be unacceptable to offerors, they should apply to the New York State 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 upon submission by the offeror. Marking the bid as "confidential" or "proprietary" on its face or in the document header or footer is not 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, explaining 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, as that is 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 is 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 (MWBE) 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 MWBE 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 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 MWBE; 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 used to determine this.

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 a manner 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 principal place of business is in a "discriminatory jurisdiction." This 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 14, 16 & 177**

Executive Order No. 14, dated February 27, 2022, requires State agencies to terminate any contracts and to refrain from entering into any new contracts with an institution or company that is determined to be a Russian or Russia supporting entity.

Executive Order No. 16, dated March 17, 2022, requires State agencies to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.

Executive Orders 14 and 16 include the following definitions:

- “Russian entity” means an institution or company that is headquartered in Russia or has its principal place of business in Russia.
- “Supporting entity” means any institution or company providing assistance to the Russian government in its campaign to invade the sovereign country of Ukraine, either through in-kind support or for-profit.
- “Entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

By submission of a response to this solicitation the offerer certifies that the Offeror:

- a) is not a Russian or Russia supporting entity, as those terms are defined in the Executive Order No. 14 (dated February 27, 2022).
- b) is not an entity conducting business operations in Russia, as those terms are defined in the Executive Order No. No. 16 (dated March 17, 2022).

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

Executive Order 177, dated February 3, 2018, 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 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 MWBE and the employment of minority group members and women in the performance of OCFS contracts.

### **MWBE 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 Enterprises (MBE) participation and **15** percent for New York State-Certified Women-Owned Business Enterprises (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 MWBE as subcontractors and suppliers in the performance of the contract. To that end, by submitting a response to this IFB, the respondent agrees that OCFS may withhold payment pursuant to any contract awarded as a result of this IFB pending receipt of the required MWBE documentation. An MWBE directory 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 MWBE 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 percent 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 IFB, 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 MWBE had the contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBE 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 also arranges to provide such evidence via a nonelectronic 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 it within seven business days of receipt by submitting to OCFS a written remedy in response to the notice 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 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 use, 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 before submitting a request for final payment on the contract.

The successful respondent will be required to submit a quarterly M/WBE Contractor Compliance and 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 contract goals.

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

By submitting 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 the same, in a format that OCFS requires 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) and 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, 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 using 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 must 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**

If 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 regarding 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 Multiagency 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 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 immediately.

#### **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](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 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 reenter 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 Fund<sup>3</sup>; or
- **Form SI-12<sup>4</sup>** - *Certificate of Workers' Compensation Self-Insurance*; or **Form GSI-105.2<sup>5</sup>** *Certificate of Participation in Workers' Compensation Group Self-Insurance*; or
- **CE-200<sup>6</sup>** - *Certificate of Attestation of Exemption* from New York State Workers' Compensation and/or Disability and Paid Family Leave 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<sup>3</sup>** - *Certificate of Disability Benefits Insurance*; or
- **Form DB-120.2** – *Certificate of Participation in Disability Benefits Group Insurance*; or
- **Form DB-155<sup>7</sup>** - *Certificate of Disability Benefits Self-Insurance*; or
- **CE-200<sup>6</sup>** - *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](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 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 IFB 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 IFB. 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, 11<sup>th</sup> 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>