



**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
Capital Facilities Services Bureau**

INVITATION FOR BIDS

IFB # 1029

Site Clearing and Vegetation Control

Issued: February 7, 2020

Mandatory Pre-bid Site Visit and Inspection:
March 30, 2020 from 12:00 to 2:00 p.m. Eastern Time

BID DUE DATE: May 1, 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) Capital Services announces the release of this Invitation for Bids (IFB) to solicit bids to make one award for the Landfill Cap Mowing Maintenance contract at the Rush Landfill located in Monroe County within the land parcel of Industry Residential Center, 375 Rush-Scottsville Rd, Rush, NY 14543.

The duties of the mowing maintenance contract include, but are not limited to:

- Scheduling and coordinating vegetation control services with the Facility Director's Representative indicated in Appendix D (Scope of Work) of this solicitation;
- Performing mowing work-component on a semi-annual basis, at a minimum;
- Performing on-call (intermittent) tree removal component work-component corresponding with the three categories of work-items indicated in Appendix D (Scope of Work).
- Performing each deliverable work-component corresponding to the designated work-areas identified in Appendix D (Scope of Work), and delineated in Appendix E-1 and Appendix E-2 of this solicitation;
- Providing labor, on-site supervision tools, equipment, the means and methods for performing work;
- Performing the work with protection measures for landfill caps, subsurface piping, existing leachate collection pump stations, control panels, appurtenant devices or causing settlement/rutting;
- Performing the work with measures to avoid land settlement, land subsidence and soil erosion, any of which may be caused by heavy equipment deployed on unstable ground.

There is a mandatory pre-bid site visit and inspection for this IFB. An RSVP will be required to attend. Please see Section 1.3 Calendar of Events and Appendix D – Scope of Work Section 1.06 for more information regarding this requirement.

Please see section 3.2 of this IFB for a full description of required services.

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 or hard copy mailed to:

New York State Office of Children and Family Services
 Attn: Bureau of Contract Management – RFP Unit
IFB # 1029 Site Clearing and Vegetation Control
 52 Washington Street, Room 202 South
 Rensselaer, NY 12144.

Email: RFP@ocfs.ny.gov. In both cases, please reference IFB # **1029**.

1.3 Calendar of Events

The table below outlines the schedule for important action dates.

EVENT	DATE
IFB issued	February 7, 2020
RSVP deadline for mandatory pre-bid site visit (See Appendix D Section 1.06)	March 23, 2020 By 4:00 p.m. Eastern Time
Mandatory pre-bid site visit and inspection (See Appendix D Section 1.06)	March 30, 2020 from 12:00 to 2:00 p.m. Eastern Time
Deadline for submission of offeror questions	April 8, 2020
Responses to questions published (on or about)	April 17, 2020
Bid due date	May 1, 2020 by 4:00 p.m. Eastern Time
Contract start date (anticipated)	July 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 – RFP Unit
IFB # 1029 Site Clearing and Vegetation Control
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 to prepare and produce 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 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 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:

- **Attachment 1 - Bid Sheet**
- **Attachment 2 - Bidder's Certified Statements**
- **Attachment 3 - References:** Identify three professional references, at least one of which must have been for work performed within the past 12 months.
- **Company Profile or Resume:** Describe work history, type of experience, personnel staff, etc. Work history must clearly demonstrate at least five years of experience supervising or performing vegetation control or site clearing using heavy equipment.
- [OCFS-4822 Procurement Lobbying Act – Offeror Certification Form](#)
- [AC 3271-S State Consultant Services – Contractor's Planned Employment \(Form A\)](#)
- [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)
- [OCFS-4821 CMS User Authorization](#)

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. 12-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)
- 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

Bidders who meet the following requirements are eligible to apply:

- Comply with the prevailing wage rate provisions of New York State Labor Law Article 8. NYS Labor Department PRC #2020000739 is applicable to the Prevailing Wage Rate Schedule for this project. NYS Labor Department Prevailing Wages are accessible online via the following link:
<https://apps.labor.ny.gov/wpp/publicViewProject.do?method=showlt&id=1492400#>
- One or more assigned personnel must have at least five years of experience supervising or performing vegetation control or site clearing using heavy equipment; and assigned applicator of vegetation killer must be certified as

Commercial Pesticide Applicator with a minimum of five years' experience. These qualifications must be clearly indicated in the vendor's company qualification profile supported with assigned personnel resume(s) to be submitted with bids.

- Complete and submit a bid proposal containing all required documents as instructed by IFB **Section 2.0 Bid Submission.**
- Attend the mandatory pre-bid site visit and inspection. An RSVP will be required to attend. Please see **Appendix D – Scope of Work Section 1.06** for more information regarding this requirement.

Please note: Omissions in information provided in the applicant's bid proposal will not be resolved in the bidder's favor.

3.2 Product/Service Specifications

The successful bidder shall provide the services described in the **Appendix D** at the location identified in **Appendix E-1** and **Appendix E-2**. This includes the Mandatory Pre-bid Site Visit and Inspection. All bidders are required to confirm their ability and intention to comply with these requirements by providing a completed **Attachment 2 – Bidders Certified Statements.**

See **Appendix D – (Scope of Work) for Vegetation Control** for detailed information regarding the work to be performed.

For detailed information regarding the work location, please consult **Appendix E-1 – Site Delineation 1** and **Appendix E-2 – Site Delineation 2.**

Applicants may subcontract components of the scope of work. For those applicants that propose subcontracting, it is preferable to identify subcontracting agencies during the application process. Applicants that plan to subcontract are expected to state in the application the specific components of the scope of work to be performed through subcontracts.

Applicants should note that the lead organization (prime contractor) will have total responsibility for all contract activities, including those performed by subcontractors, and will be the primary contact for OCFS. If OCFS requests, the contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that exceed \$100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State. The State has the right to review and approve every subcontract that exceeds \$100,000 before giving written permission to the Contractor to enter into the subcontract. All subcontractors must be approved by OCFS.

3.3 Delivery

By submitting a bid, the offeror agrees to:

- Provide the services as described in Section 3.2 above.

The facility required to be serviced by the bidder is listed below:

- Rush Landfill within the land parcel of Industry Secure Residential Center, 375 Rush-Scottsville Road, Town of Rush, Monroe County NY 14543.

3.4 Security Procedures

Please note that the delivery location may have 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 three years from the date of acceptance.

During the product warranty period, defects in the materials or workmanship of products, components, or parts specified and furnished by or through 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 bidder submitting a bid in compliance with Section 2.0 Bid Submission, meeting requirements stated in Section 3.0 Specifications, passing vendor responsibility review, and offering the lowest bid will be awarded.

If a tie bid results, the offerer with the most experience (in months) conducting vegetation control will be awarded the contract.

If a tie still exists, each offeror submitting a qualified tie bid will have their names written on a piece of paper, which will be placed in a hat. One offeror will be chosen at random by selecting one of the slips of paper.

4.2 Price

Bid price must include any and all costs associated with providing and delivering the items as specified, including travel, licenses, insurance, administrative, customs, duties, charges and ancillary costs, and be net F.O.B. destination.

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 and will continue for a period of 3 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 following the completion of required services, OCFS receipt and review of the following document submissions by the vendor:

1. Vendor's invoices corresponding with OCFS receipt and acceptance of the required work-items completed and accepted by OCFS,
2. Submission of required support documents for services and/or
3. Signed claim for payment form, as directed by OCFS in the Appendix C of the resulting contract.
4. Weekly payroll summary for workers who perform the work; covering each period of work performance and corresponding invoice; and certified

documentation using form PW-12 (NYS Department of Labor - Bureau of Public Work) or vendor selected document/form with relevant information.

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 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 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. 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 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
<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 principle 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 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, which can be found at:

<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 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 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 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 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. 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 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 it within seven business days of receipt by submitting to OCFS a written remedy in response to the notice 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 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 & 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 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 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 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 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.

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: Scope of Work
10. Appendix MWBE
11. Appendix E-1: Site Delineation 1 – Rush Landfill
12. Appendix E-2: Site Delineation 2 – Rush Landfill

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