



**Office of Children
and Family Services**

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Governor

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Acting Commissioner

**New York State
Office of Children and Family Services
Audit and Quality Control**

INVITATION FOR BIDS

IFB # 1102

**Grant Compliance Review Services
Child Care Stabilization 1.0 Monitoring**

Issued: 9/1/2023

BID DUE DATE: 10/13/2023 by 4:00 p.m. Eastern Time

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1. Introduction

1.1 Overview

The New York State (NYS) Office of Children and Family Services (OCFS) announces the release of this Invitation for Bids (IFB) to perform a grant compliance review of childcare providers' expenditures for funds they received from the Child Care Stabilization Grants.

The Child Care Stabilization funds were made available through the American Rescue Plan (ARP) Act. The goal of the grant is to provide financial relief to childcare providers to help cover unexpected business costs associated with the COVID-19 pandemic, and to help stabilize their operations so they may continue to provide care. Please refer to **Attachment 3 – Child Care Stabilization Grant Opportunity Announcement** to learn more about the project for which the awarded vendor will be performing grant compliance reviews.

The first Child Care Stabilization grant (also known as Stabilization 1.0) was released on August 3, 2021, and \$1.074 billion was made available to eligible childcare providers. Applications were closed for Stabilization 1.0 on November 30, 2021. OCFS has awarded \$900 million to 15,014 eligible childcare providers. Payments began within 30 days after the provider's application was approved. Payments were made in 6 monthly installments. Providers that received funding from Stabilization 1.0 have until 9/30/2023 to spend the funds on eligible expenses. Providers are required to keep written or electronic records for at least 5 years in case of an audit. They must document how they spend their grant money so they can show that it was used to improve their program or help it recover from the COVID-19 public health emergency.

OCFS is required to monitor how providers used their grant awards and has determined contracting with a third party is the best course of action due to the time and resources needed to perform these reviews. Approximately 750 providers will be receiving a grant compliance review. The purpose of performing these reviews is to monitor providers' use of the Stabilization 1.0 funds.

The objective of each review is to determine whether:

1. Providers spent their Stabilization 1.0 awards on allowable expenses.
2. Providers' documentation adequately supports their expenses, including whether they can provide proof of payment. Documentation may include expense receipts, invoices, or other similar documents.
3. Providers complied with the terms and conditions of the grant award.

Childcare providers are located throughout New York State and, depending on whether electronic submission of document requests is possible, the reviews may take place on-site, be conducted as desk reviews, or a combination of both.

OCFS estimates the number of hours needed to review supporting documentation for each provider averages approximately 6 hours, depending on the following factors:

- the type of expense being reviewed (payroll, rent, and utilities generally take less time to review than individual receipts for goods purchased);
- the organization of the files; and
- and the magnitude of documentation submitted.

Outside of the actual review of documentation, the length of time needed to establish contact with providers, obtain their supporting documentation, and follow-up on any questions or obtain additional documentation is estimated to be approximately 5 to 40 business days.

OCFS intends to make one award. The lowest cost vendor who meets all mandatory requirements will be awarded the contract. **The maximum bid amount inclusive of possible translation and all direct services cannot exceed \$990,000. Any bid exceeding this amount will be disqualified.** A travel budget of \$10,000 will be added to all bids for estimated travel costs and included in the awarded contract to cover travel directed by OCFS.

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 e-mail (preferred) or hard copy mailed to:

New York State Office of Children and Family Services
Attn: Bureau of Contract Management – Procurement Unit
IFB # 1102 Grant Compliance Review Services
52 Washington Street, Room 202 South
Rensselaer, NY 12144.

E-mail: RFP@ocfs.ny.gov. In both cases, please reference **IFB # 1102**.

1.3 Calendar of Events

The table below outlines the schedule for important action dates.

EVENT	DATE
IFB issued	9/1/2023
Deadline for submission of offerer questions	9/15/2023 by 4:00 p.m. Eastern time
Responses to questions published (<i>on or about</i>)	9/29/2023
Bid due date/Bid opening date	10/13/2023 by 4:00 p.m. Eastern time
<i>Anticipated</i> Contract start date	2/1/2024

1.4 IFB Questions and Clarifications

All questions regarding this IFB, including questions regarding the minimum qualifications and specifications, should be e-mailed 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 offerer is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective offerers 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 offerer asking the question.

2. Bid Submission

2.1 Instructions for Bid Submission

Only bids from offerers 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 e-mail to RFP@ocfs.ny.gov by the Bid Due Date and time set forth in Section 1.3 – Calendar of Events. All bid documents must be sent as attachments as OCFS is unable to download any documents. The e-mail subject line should include the following information: **IFB # 1102 and Vendor Name**. If bid requires files be sent in multiple e-mails, indicate

the e-mail 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 e-mail.

Bid proposals must be attached to the e-mail in a manner that results in the electronic document(s) being transmitted with the e-mail. The bid proposal must be received by OCFS secure e-mail servers to be considered properly received. Clickable links to download the bid proposal and/or the use of third-party file hosting services are not permissible as the bidder's e-mail submission is not transmitting the electronic document(s) of the bid proposal to OCFS.

E-mail delivery or read receipts are recommended. OCFS will provide a confirmation e-mail that the bid has been received including the number of attachments. Bidders are responsible for contacting OCFS prior to the deadline if confirmation is inaccurate or has not 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), 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 e-mail should state that previous bid(s) submitted are withdrawn. If this is not clear in the e-mail, 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.

Offerers 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 e-mails that is received at the RFP@ocfs.ny.gov e-mail 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 offerer has demonstrated to the satisfaction of the Commissioner that the late bid was caused solely by factors outside the control of the offerer.

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 offerer. 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 offerer.

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. If applicable, 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*
- Attachment 1 – Bidder’s Certified Statements
- Attachment 2 – References
 - three (3) professional references for compliance review, auditing, or similar services, one of which for services provided within the past twelve (12) months.
- A written narrative describing how the organization meets the eligibility requirements:
 - Has the capacity and agrees to conduct grant compliance reviews statewide, including conducting reviews on-site if electronic document submission is not possible.

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- Has identified the number of employees and the location(s) of all relevant offices in NYS or elsewhere that will be used for this project.
- Has relevant experience conducting grant compliance reviews with human service agencies and/or nonprofit agencies at a statewide level.
- Has a secure means of electronically receiving and storing providers' supporting documentation.
- Identifies whether staff can communicate with providers in other languages and/or have experience working with a professional translation service to provide the languages identified in **Section 3.2, Product/Service Specifications, item 1.**

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/>.

The following documents should also be completed and provided in the bid, otherwise they will be required during the contract development process:

- [OCFS-3460, MWBE Equal Employment Opportunity \(EEO\) Policy Statement Form](#)
- [OCFS-2633, MacBride Fair Employment Principles Certification Form](#)
- [OCFS-2634, Non-Collusive Bidding Certification](#) (Required by section 139d of State Finance Law).
- [Vendor Responsibility Questionnaire](#) (or proof of online VendRep certification. See **Section 4.21** of the IFB for more information)
- [OCFS-2647, EO 177 Certification](#) (See **Section 4.12** for more information)
- [OCFS-4821, CMS User Authorization](#)
- [OCFS-4822, Procurement Lobbying Act – Offerer Certification Form](#)
- [AC 3271-S, State Consultant Services – Contractor's Planned Employment \(Form A\)](#)
- [OCFS-4715, Confidentiality Non-Disclosure Agreement](#)
- [OCFS-4716, Contractor Employee and Volunteer Background Certification](#)

General Proposal Appearance

Bid proposal e-mails 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 all document attachments provided via e-mail 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 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 offerers 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

Failure to meet any requirements outlined in **Section 3.0** may result in a bid being found non-responsive and eliminated from consideration.

3.1 Eligible Bidders

Eligible offerers must meet the following requirements to be eligible to bid.

Offerers must:

- Have the capacity and agree to conduct grant compliance reviews statewide, including conducting reviews on-site if electronic document submission is not possible.
- Have employees and relevant offices located in NYS or elsewhere that can be used for this project.
- Have relevant experience conducting grant compliance reviews with human service agencies and/or nonprofit agencies at a statewide level.
- Have a secure means of electronically receiving and storing providers' supporting documentation.
- Have staff who possess the ability to communicate with providers in other languages and/or have experience working with a professional translation service to provide the languages identified in **Section 3.2, Product/Service Specifications, item 1**.

3.2 Product/Service Specifications

The OCFS Office of Audit and Quality Control (AQC), working with the Division of Child Care Services (DCCS) will manage this program and provide the awarded contractor with a sample of providers for the review. The sample will represent 5% of the total population of providers within each modality, or approximately 750 providers in total with an average review time of 6 hours. This sample may also include specific providers identified by DCCS for review.

For each provider within the sample, AQC will provide the following data:

- Contact information, such as e-mail addresses and mailing address.
- Provider modality, license status, whether the provider is currently providing care or is closed, and the date of closure (if applicable).
- Total Stabilization 1.0 grant award amounts and the amount of funds disbursed to each provider.
- Amount returned to OCFS (if applicable).
- Provider expense reports including Stabilization 1.0 expenditures.

The awarded contractor will perform the following work:

1. Establish contact with each of the providers in the sample using the contact information provided by AQC. This may involve sending letters to each provider via e-mail and mail to inform them they have been selected for the review. The contractor will also be responsible for communicating information to the providers about how the review will be conducted and what to expect during the review process. The contractor will be expected to keep track of their communications and responses received from providers, including a list of the providers they have reached out to, received responses from, and the providers they have been unable to establish contact with.

Vendors must have capacity to work with providers that have limited English speaking/writing/reading abilities and be able to communicate in the provider's primary language. This can be done in house if the awarded contractor has staff available that can communicate in the primary language or through a professional translation service. OCFS requires the availability of the following top 12 languages spoken by limited English speaking/writing/reading individuals: Spanish, Chinese, Russian, Yiddish, Bengali, Haitian Creole, Korean, Italian, Arabic, Polish, French, and Urdu. Translation costs should be included in the bid price. It is estimated that 10% of the NYS population are limited English proficiency (LEP).

2. Be available to answer questions providers may have about the review, including technical assistance with electronically uploading their documentation to a secure environment for the awarded contractor to perform their grant compliance review. This may include conducting online

informational meetings with providers should they request it and answering e-mails and phone calls from the providers.

3. Keep track of which providers have been able to upload their documents, which are in process, and which ones have been unable to electronically submit their documents.
4. For providers unable to electronically submit their documentation, the contractor will have to work with the provider to determine a different method for submitting their documents, which may include through the mail or on-site reviews, if directed by OCFS. Staff may need to conduct the reviews on-site and would need to either be physically located near the provider or be able to travel.
5. Review providers' supporting documentation against criteria provided by AQC and DCCS (Attachment 4 Allowable Expenses and Required Supporting Documents) to determine whether it is sufficient and if the expenses are allowable. The criteria are based on the terms and conditions of the grant award(s) and the contractor must document instances of non-compliance, including failure to supply requested documentation.

Supporting documentation can include receipts, invoices, and other similar documentation.

Proof of payment can include cancelled checks, bank statements, credit card statements or other similar documents.

6. Serve as a liaison between AQC and the provider when questions arise on whether documentation is sufficient or expenses are allowable. The contractor may have to follow-up with the provider if documentation is unclear, request additional documentation, or request that the provider submit documentation for other expenses if anything is found unallowable.
7. Provide progress updates to AQC on a monthly basis throughout the review. This will serve as an opportunity for the contractor to inform AQC of any issues found or questions that have arisen over the course of the review. AQC may request written status reports as part of these updates which may include information such as:
 - a. The names/IDs and total number of providers at each stage of the review (for example: contact established, working on submitting their documentation, documentation received, questions pending, review completed).
 - b. The names/IDs and total number of providers who have been non-responsive, failed to provide supporting documentation, or have instances of non-compliance.

- c. The types of instances of noncompliance being found.
 - d. Discuss preliminary findings with AQC.
8. Issue a close-out letter to the provider stating the results of the review, whether any disallowances were made, and if so, the next steps for the provider.
9. Prepare a written report including:
 - a. A description of the types of issues found during the review.
 - b. Total number of providers found non-compliant categorized by type of issue.
 - c. The dollar amount of each type of issue.
 - d. The total dollar amount spent on each expense category.
 - e. An appendix which lists all providers found to have instances of noncompliance and provide a brief description of the instances noted.

The work for stabilization grant monitoring will need to be completed one year from contract start date.

10. As authorized by NYS budget appropriations and re-appropriations, OCFS released additional pandemic and State funded daycare provider grants after the Child Care Stabilization Grant. Upon OCFS request, the selected contractor will be asked to perform additional grant compliance reviews of awarded provider grant amounts and expense documentation at the hourly rates specified in the contract resulting from this IFB. This may result in additional funding and/or a time extension to the approved contract for the performance of this additional work.

Applicants may not subcontract components of the scope of work except for translation or interpretation services and travel arrangements.

3.3 Delivery

Childcare providers are located throughout New York State and all documentation will need to be provided electronically or in hardcopy through the mail if possible. If electronic submission of document requests is not possible, the reviews may take place on-site, be conducted as desk reviews, or a combination of both

Travel may be required to perform delivery of the required services as directed by OCFS. A travel budget of \$10,000 will be added to all bids for estimated travel costs and included in the awarded contract to cover travel directed by OCFS. Travel costs must comply with the NYS Travel Guidelines available at <https://www.osc.state.ny.us/state-agencies/travel>. Travel will be reimbursed on actual allowable expenditures.

The vendor will provide updates and the results of the grant compliance reviews as described in **Section 3.2 Product/Service Specifications**.

3.4 Security Procedures

Personal identifying information obtained during the review must be safeguarded and properly disposed of upon completion of the review. If OCFS directs the awardee to conduct a review on-site, staff will be escorted by provider staff.

3.5 Warranty (if commodity purchase)

Not applicable.

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 hourly rate bid will be awarded. Please see **Section 4.2 Price** for more information regarding bid rate requirements.

If a tie bid results, offerers with the most demonstrated experience will be selected as the winning bidder. If there is still a tie, the decision as to the winning bid will be made by the Commissioner in accordance with the State Finance Law §163(10)(a) and any policy stated in the IFB.

4.2 Price

Bidders are expected to provide a single hourly bid rate for all work to be performed, **exclusive of travel. Offerer is not to include travel expenses in their bid price.** A travel budget of \$10,000 will be added to all bids for estimated travel costs and included in the awarded contract to cover travel directed by OCFS. Travel costs must comply with the NYS Travel Guidelines available at <https://www.osc.state.ny.us/state-agencies/travel>. Travel will be reimbursed on actual allowable expenditures.

Bid price must include any and all costs associated with providing and delivering the items as specified, including translation services, licenses, insurance, administrative, customs, duties, charges and ancillary costs, and be net F.O.B. destination. **The maximum bid amount inclusive of possible translation and all direct services cannot exceed \$990,000. Any bid exceeding this amount will be disqualified.** Taxes and travel should be excluded from the bid price.

4.3 Term of Contract

It is the intention of the State to award a single contract to the awarded offerer. The contract will commence on or about the contract date as stated in **Section 1.3** and will continue for a period of 12 months with the option to renew for up to four more years at OCFS's sole discretion and upon agreement of the contractor. The contract is subject to approval by the 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. Grant compliance reviews must be completed within nine months and final reports are due to OCFS one year from contract start date.

4.4 Method of Payment

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

4.5 Dispute Resolution

It is OCFS's policy to provide vendors with an opportunity to administratively resolve disputes, complaints, or inquiries related to bid solicitations, contract awards, and contract administration. OCFS encourages vendors to seek resolution of disputes informally, through consultation with staff, before commencing a formal dispute process. All such matters will be accorded impartial and timely consideration. See **Section 4.26** for additional information.

4.6 Contractor Responsibilities

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

4.7 Inspection of Books

It is expressly understood and agreed that OCFS and OSC shall have the right to inspect and audit the contractor's records covered under this agreement, in accordance with his/her statutory responsibility to examine the books and accounts of every agency. OSC requires, and the contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any purchase order

resulting from this IFB for a full three-year period or contract resulting from this IFB for a full six-year period.

4.8 OCFS Reserved Rights

OCFS reserves the right to

1. place a monetary cap on the funding amount made in each contract award;
2. change any of the schedule dates stated in this IFB;
3. reject any or all proposals received in response to the IFB;
4. withdraw the IFB at any time at the agency's sole discretion;
5. make an award under the IFB in whole or in part;
6. disqualify any offerer 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 offerer is not a responsible vendor;
8. seek clarification and revisions of proposals. Ask offerers to present supplemental information clarifying their proposals either in writing or by formal presentation. New information is not permitted;
9. require that offerers 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 offerers, and direct all offerers 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 offerer 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 offerer's proposal and/or adopt all or part of the selected offerer's proposal based on federal and state requirements;
13. eliminate any IFB requirements that cannot be met by all prospective offerers upon notice to all parties that submitted proposals;

14. waive procedural technicalities or modify minor irregularities in proposals received after notification to the offerer involved;
15. correct any arithmetic errors in any proposal or make typographical corrections to proposals with the concurrence of the offerer;
16. negotiate with the selected offerer(s) before contract award;
17. conduct contract negotiations or award a contract to the next highest offerer if contract negotiations with the selected offerer(s) cannot be accomplished within an acceptable time frame. No offerer will have any rights against OCFS arising from such actions;
18. award contracts to more than one offerer or to other than the lowest offerer;
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 offerer 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 offerer's proposal and/or to determine an offerer'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 offerers 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 offerer 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 offerer'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 offerer'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

offerers, 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 offerer. 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 offerer.

Offerers/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 offerer’s proposal unless DOB grants a petition for records access in accordance with FOIL.

Offerers 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 offerer, would not alter the rights and responsibilities of either party under FOIL. Offerers 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 offerer.

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 offerers, 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
E-mail: 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
E-mail: 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 offerer 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. Offerers 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 offerers 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. Offerers 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 Orders

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 offerer:

- 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).

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 **0%** for MWBE participation, **0%** for New York State-certified Minority-owned Business Enterprises (MBE) participation and **0%** 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% 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 contractcompliance@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 MWBE Contractor Compliance and 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 3 of Veterans' Services 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 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 Veterans' Services 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 offerer's proposal includes services provided by another firm, it shall be mandatory for the selected offerer to assume full responsibility for the delivery for such items offered in the proposal. Should the selected offerer 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 offerer, not the offerer's financing institution or subcontractors. The State shall consider the selected offerer to be the sole responsible contact regarding all provisions of the contract resulting from this IFB. Should an offerer 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 e-mail no later than the Deadline for Submission of Written Questions specified below. Questions received after the deadline may not be answered.
3. Prospective offerers shall not approach state personnel with offers of employment during the procurement period or risk being disqualified from the procurement. Any offerer who is aware of a state employee who is considering employment with the offerer 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 – Offerer 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 offerer 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 offerers 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 offerer 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 offerer 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 offerer 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 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 e-mail at itservicedesk@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 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 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-120.1³** - *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-200⁸** - *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 offerer 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 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 communication.
3. Such debriefing will include: (a) the reasons the proposal, bid, or offer submitted by the unsuccessful offerer was not selected for an award; (b) the qualitative and quantitative analysis employed by OCFS in assessing the relative merits of the proposals, bids, or offers; (c) the application of the selection criteria to the unsuccessful offerer's proposal; and (d) when the debriefing is held after the final award, the reasons for the selection of the winning proposal, bid, or offer. The debriefing will also provide, to the extent practicable, general advice and guidance to the unsuccessful offerer concerning potential ways for their future proposals, bids, or offers to be more responsive.

D. Formal Protest and Appeal Procedure

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

1. Submission of Bid or Award Protests

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

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

2. Review and Formal Protest Determination

- a. Formal protests must be filed with the OCFS deputy commissioner for administration. Any protests filed with the OCFS program division responsible for the procurement will be forwarded to the deputy commissioner for administration, who will then provide copies of all formal protests to the OCFS Division of Legal Affairs and other necessary parties within OCFS, as determined by the deputy commissioner for administration.
- b. Formal protests shall be resolved through written correspondence; however, either the protesting party or OCFS may request a meeting to discuss a formal protest. Where further formal resolution is required, the program division responsible for the procurement may designate a state employee not involved in the procurement (designee) to determine and undertake the initial attempted resolution or settlement of any formal protest.
- c. The OCFS program division responsible for the procurement will conduct a review of the records involved in the formal protest and provide a memorandum to the deputy commissioner for administration or the deputy commissioner's designee summarizing the facts, an analysis of the substance of the protest, and a preliminary recommendation including: (a) an evaluation of the findings and recommendations, (b) the materials presented by the protesting party and/or any materials required of or submitted by other bidders, (c) the results of any consultation with the OCFS Division of Legal Affairs, and (d) a draft response to the formal protest.
- d. The OCFS deputy commissioner for administration or his or her designee shall hear and make a formal protest determination on all formal protests. A copy of the formal protest determination, stating the reason(s) upon which it is based and informing the protesting party of the right to appeal an unfavorable decision to the OCFS commissioner, shall be sent to the protesting party or its agent within 30 business days of receiving the formal protest, except that upon notice to the protesting party, OCFS may extend such period. The formal protest determination will be recorded and included in the procurement record or otherwise forwarded to the OSC.

3. Appeal of Formal Protest Determination

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

4. Reservation of Rights and Responsibilities of OCFS

- a. OCFS reserves the right to waive or extend the time requirements for protest submissions, decisions, and appeals herein prescribed when, in its sole judgment, circumstances so warrant to serve the best interests of the State.
- b. If OCFS determines that there are compelling circumstances, including the need to proceed immediately with contract award and development of final contracts in the best interests of the State, then these protest procedures may be suspended, and such determination shall be documented in the procurement record.
- c. OCFS will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action, including solicitation of bids, or withdraw the recommendation of contract award before issuance of a formal protest decision.
- d. Unless a determination is made to suspend, modify, or cancel the protested procurement action, or withdraw the recommendation of contract award, OCFS will continue procurement and contract award activity before the formal protest determination. Receiving a formal protest will not otherwise stop action on the procurement and award of the contract(s) or on development of final contracts.
 - i. The procurement record and awarded contract(s) will be forwarded to OSC, and a notice of the receipt of a formal protest and any appeal will be included in the procurement record. If a formal protest determination, or a decision after appeal, has been reached before transmittal of the procurement record and the contract(s) to OSC, a copy of the formal protest determination or

decision after appeal will be included in the procurement record and with the contract(s).

- ii. If a formal protest determination or decision after appeal is made after the transmittal of the procurement record and contract(s) to OSC, but before OSC approval, a copy of the formal protest determination or decision after appeal will be forwarded to OSC when issued, along with a letter either: (a) confirming the original OCFS recommendation for award(s), (b) modifying the proposed award recommendation, or (c) withdrawing the original award recommendation.
- iii. All records related to formal protests and appeals shall be retained for at least one year following resolution of the formal protest. All other records concerning the procurement shall be retained according to the applicable requirements for records retention.

E. Appeal to the Office of the State Comptroller

If the protesting party is still unsatisfied with the result of its protest after conclusion of the formal protest and appeal procedure described above, the protesting party may file a written appeal with the OSC within 10 business days of the date the protesting party received OCFS' protest determination. An appeal to the OSC's Bureau of Contracts must be in writing and must contain the specific factual and/or legal allegations setting forth the basis upon which the protesting party challenges the contract award by OCFS. Such appeal must be filed with the director of the Bureau of Contracts at the NYS Office of the State Comptroller (OSC), 110 State Street, 11th Floor, Albany, NY 12236.

4.27 Standard Contract Language

The terms and conditions can be viewed [online by clicking on this link and are hereby incorporated into this IFB](#). By applying to this IFB, offerers agree that they have reviewed and understand the contract terms and conditions. Contracts awarded under this IFB must be approved by the New York State Office of the Attorney General (OAG) and the OSC before any payments are made on such contracts. Contractor obligations or expenditures before the contract start date shall not be reimbursed. Upon contract award and completion of negotiations, OCFS will send successful awardee(s) the complete contract for development and signature before submitting it to the OAG and to OSC for approval.

4.28 Appendix A - Standard Clauses for NYS Contracts

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

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

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

5. **Contract Documents**

The contract documents consist of the documents listed below.

1. Face Page
2. OCFS Agreement
3. Signatory Page
4. Appendix A
5. Appendix A-1 (Standard Clauses for all OCFS Contracts)
6. Appendix A3 (Federal language, when applicable)
7. Appendix B: Budget and Instructions
8. Appendix C: Payment and Reporting Schedule
9. Appendix D: Work Plan
10. Appendix HIPPA (when applicable)
11. Appendix MWBE
12. Appendix E (Notice of Grant Award, if federally funded)
13. 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>