



**Office of Children  
and Family Services**

**KATHY HOCHUL**  
Governor

**DAMIA HARRIS-MADDEN, Ed.D., MBA, M.S.**  
Commissioner

**New York State  
Office of Children and Family Services  
Capital Services**

**INVITATION FOR BIDS**

**IFB 1162**

**Wastewater Treatment Management**

**Issued: 8/30/2024**

**BID DUE DATE: 10/8/2024 by 4:00 p.m. ET**

IFB 1162 Wastewater Treatment Management

Table of Contents

- 1. Introduction ..... 4
  - 1.1 Overview..... 4
  - 1.2 Designated Contacts..... 5
  - 1.3 Calendar of Events ..... 5
  - 1.4 IFB Questions and Clarifications ..... 5
- 2. Bid Submission ..... 6
  - 2.1 Instructions for Bid Submission ..... 6
  - 2.2 Packaging of IFB Response ..... 8
- 3. Specifications ..... 10
  - 3.1 Eligible Bidders ..... 10
  - 3.2 Product/Service Specifications ..... 10
  - 3.3 Delivery..... 13
  - 3.4 Security Procedures..... 14
  - 3.5 Warranty (if commodity purchase)..... 14
- 4. Administrative Information..... 14
  - 4.1 Method of Award ..... 14
  - 4.2 Price..... 14
  - 4.3 Term of Contract..... 15
  - 4.4 Method of Payment..... 15
  - 4.5 Dispute Resolution ..... 15
  - 4.6 Contractor Responsibilities ..... 15
  - 4.7 Inspection of Books ..... 15
  - 4.8 OCFS Reserved Rights..... 16
  - 4.9 Incurred Costs ..... 18
  - 4.10 Security, Nondisclosure, and Confidentiality Agreement ..... 18
  - 4.11 Omnibus Procurement Act ..... 19
  - 4.12 Executive Orders..... 22
  - 4.13 Minority- and Women-owned Business Enterprises (MWBE) – Equal Employment Opportunity (EEO) - Requirements & Procedures ..... 23
  - 4.14 Service-Disabled Veteran-Owned Business (SDVOB) ..... 26
  - 4.15 Anti-Kickback Act..... 27
  - 4.16 Contractor Responsibility..... 27
  - 4.17 Multiagency Use..... 27

IFB 1162 Wastewater Treatment Management

**4.18 Contacts with Employees ..... 27**

**4.19 Procurement Lobbying Act ..... 28**

**4.20 Public Officers Law ..... 29**

**4.21 Vendor Responsibility..... 29**

**4.22 Workers’ Compensation Law ..... 31**

**4.23 New York State Sales and Compensating Use Taxes..... 32**

**4.24 Confidentiality and Required Awardee, Contractor, Employee, and Volunteer  
Background Checks ..... 32**

**4.25 Consultant Disclosure Requirements..... 33**

**4.26 OCFS Procedure for Handling Debriefing Requests, Formal Protests, and  
Appeals ..... 35**

**4.27 Standard Contract Language..... 39**

**4.28 Appendix A - Standard Clauses for NYS Contracts ..... 39**

**4.29 State Finance Law §139-l; Statement on Sexual Harassment in Bids ..... 40**

**5. Contract Documents ..... 40**

## 1. Introduction

### 1.1 Overview

The New York State Office of Children and Family Services (OCFS) is soliciting bids for the daily operations and management of the Wastewater Treatment Plants at five OCFS Division of Juvenile Justice and Opportunities for Youth (DJJOY) facilities.

The following facilities listed below require services:

- Finger Lakes Residential Center  
250 Auburn Road  
Lansing, NY 14882
- MacCormick Secure Center  
300 South Road  
Brooktondale, NY 14817
- Red Hook Residential Center  
531 Turkey Hill Road  
Red Hook, NY 12571
- Highland Residential Center  
629 North Chodikee Lake Rd  
Highland, NY 12528
- Goshen Secure Center  
97 Cross Road  
Goshen, NY 10924

Please see the attached Exhibits, one for each facility listed in this solicitation.

The duties of the daily operations and management include, but are not limited to:

- serving as the “Operator of Record” and “Authorized Agent” and performing all necessary daily and emergency operations of the Wastewater Treatment Plants at each of the facilities identified;
- performing operations in strict compliance with each facility’s State Pollutant Discharge Elimination System (SPDES) permit;
- maintaining daily logs at each location;
- performing all required sampling at each location;
- completing/submitting Discharge Monthly Reports for each location; and
- completing inspections and reporting of all equipment and operations of each facility as indicated in **Section 3.2 Product/Service Specifications** to the Facility Director and New York State (NYS) OCFS Capital Services.

IFB 1162 Wastewater Treatment Management

There will be one award made from this procurement, which shall cover the required services for all five of the identified facilities.

Please see **Section 3.2** 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 (preferred) or hard copy mailed to:

New York State Office of Children and Family Services  
Attn: Bureau of Contract Management – Procurement Unit  
**IFB 1162 Wastewater Treatment Management**  
52 Washington Street, Room 202 South  
Rensselaer, NY 12144.

Email: [funding@ocfs.ny.gov](mailto:funding@ocfs.ny.gov). In both cases, please reference IFB 1162.

**1.3 Calendar of Events**

The table below outlines the schedule for important action dates.

EVENT	DATE
IFB issued	8/30/2024
Deadline for submission of offerer questions	<b>9/16/2024</b>
Responses to questions published <i>(on or about)</i>	9/23/2024
Bid due date/Bid opening date	<b>10/8/2024 by 4:00 p.m. Eastern time</b>
<b>Anticipated</b> Contract date	12/1/2024

**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 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 NYS 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 email to [funding@ocfs.ny.gov](mailto:funding@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 email subject line should include the following information: IFB 1162, Wastewater Treatment Management and Vendor Name. If bid requires files be sent in multiple emails, indicate the email number, e.g., 1 of 2. No facsimile or hard copy bids will be accepted. Bid submissions for this procurement should only contain bid proposals for this specific funding opportunity and bidders should submit only one bid proposal per submission email.

**Bid proposals must be attached to the email in a manner that results in the electronic document(s) being transmitted with the email. The bid proposal must be received by OCFS secure email 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 email submission is not transmitting the electronic document(s) of the bid proposal to OCFS.**

Email delivery or read receipts are recommended. OCFS will provide a confirmation email that the bid has been received including the number of attachments. Bidders are responsible for contacting OCFS prior to the deadline if confirmation 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), or are incomplete, or that contain any omissions, erasures, alterations, additions or items not required by the IFB, or that contain irregularities of any kind may be rejected. All costs associated with the preparation of a bid are the responsibility of the Bidders and cannot be charged to OCFS. Bidders may modify, in writing, the content of any bid at any time prior to the bid due date and time, however a

## IFB 1162 Wastewater Treatment Management

complete re-submission of all bid documents is required. OCFS will not substitute sections of a bid. The email should state previous bid(s) submitted are withdrawn. If this is not clear in the email, OCFS will only consider the latest bid submitted for award. Bids may be withdrawn or canceled before the bid due date and time.

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

**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 emails, that is received at the [funding@ocfs.ny.gov](mailto:funding@ocfs.ny.gov) email after the Bid Due Date & Time in **Section 1.3 Calendar of Events** will be considered a late bid. A late bid may be rejected and disqualified from award. However, a late bid may be accepted in the Commissioner's sole discretion when:

- (i) no timely bids meeting the requirements of the solicitation are received; or
- (ii) the 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:

- **Attachment 1 – OCFS-0910 IFB 1162 Request for Bid Form:**  
Must include the bid amount.
- **Attachment 2 – Bidder’s Certified Statements:**  
Must be completed, signed, and dated by the bidder.
- **Attachment 3 – References:**  
Must identify three professional references, at least one of which must have been for work performed within the past 12 months.
- **Proof of NYS Wastewater Certification(s)** for personnel to provide services at the Wastewater Treatment Plants (WWTP)
  - Chief Operator(s) shall be a minimum **Grade 3A** to be able to provide required services for the Goshen and Highland facilities; and a minimum **Grade 2A** to be able to provide required services for all other facilities.
  - Operator(s) shall be a minimum **Grade 2A** to be able to provide required services for the Goshen and Highland facilities; and a minimum **Grade 1A** to be able to provide required services for all other facilities.

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** 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](#)
- [OCFS-4715, Confidentiality Non-Disclosure Agreement](#)
- [OCFS-4716, Contractor Employee and Volunteer Background Certification](#)

For complete proposal and contract requirements for the Minority- and Women-owned Business Enterprises (MWBE) and Equal Employment Opportunity (EEO) requirements, refer to **Section 4.13**.

### **General Proposal Appearance**

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

- [OCFS-4631, MWBE Utilization Plan Form](#)
- [SDVOB-100, SDVOB Utilization Plan](#)
- [OCFS-4629, Project Staffing Plan Form](#)
- [AC 3271-S, State Consultant Services – Contractor’s Planned Employment](#) (Form A)
- [ST-220-TD, Contractor Certification](#)
- [ST-220-CA, Contractor Certification to Covered Agency](#)
- Proof of [workers’ compensation](#) and [disability benefits coverage](#) or *Certificate of Attestation of Exemption* from New York State Workers’ Compensation Board and/or disability benefits coverage

- The Contractor shall provide OCFS with an original Certificate of Insurance indicating the Contractor has a policy of comprehensive liability insurance covering the services to be performed under the contract, for the duration of the contract, and naming OCFS as an additional insured in effect at the time of contract execution. No payment will be made without proof of insurance. Such proof must be provided to OCFS annually by the contractor.

### 3. **Specifications**

Failure to meet the minimum requirements outlined in **Section 3.1** may result in a bid being found non-responsive and eliminated from consideration.

#### 3.1 **Eligible Bidders**

**All eligible bidders must be organizations able to provide and meet the following criteria at the time of bid submission:**

- Agree to provide all required services outlined in **Section 3.2** through **Section 3.5** for all five facilities listed in this IFB.
- The organization must possess at least 24 months of experience providing similar service.
- The NYS Wastewater Certification Grade of the Chief Operator shall be a minimum Grade 3A to provide required services for the Goshen and Highland facilities; and a minimum NYS Wastewater Certification Grade 2A to provide required services for all other facilities.
- The NYS Wastewater Certification Grade of the Operator(s) shall be a minimum Grade 2A to provide required services for the Goshen and Highland facilities; and a minimum NYS Wastewater Certification Grade 1A to provide required services for all other facilities.

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

ALL BIDDERS SHALL PROVIDE THE FOLLOWING SERVICES AND ARE REQUIRED TO CONFIRM THEIR ABILITY AND INTENTION TO COMPLY WITH THESE REQUIREMENTS IN THE **ATTACHMENT 2 – BIDDER’S CERTIFIED STATEMENTS**.

Please see attached Exhibits for each facility listed in this solicitation. Bidders are advised to review all Exhibits thoroughly and use them as a factor in determining bid rates and their ability to provide the required services at the listed facilities.

IFB 1162 Wastewater Treatment Management

- A. The Contractor shall perform an initial review and evaluation of each facility's State Pollutant Discharge Elimination System (SPDES) permit, its WWTP process, the characteristics of each plant's inflows and outflows (evaluation of process effectiveness), and all equipment and controls of the plant (conditions and suitability assessment of the treatment plant, equipment, and controls). Additionally, the evaluation shall include a description of each aspect of the plant's process and the equipment present (pumps, motors, switches, compressors, etc.) and a prescribed preventative maintenance schedule for each.
- B. This initial report shall be submitted to the Senior Architect at NYS Office of Children and Family Services; Capital Services, 52 Washington St. South Bldg. Room 106 Rensselaer, NY 12144 within the first 60 calendar days of contract commencement. The report must be certified by the highest-level wastewater treatment plant operator at the facility as required herein.
- C. The Contractor shall serve as "Operator of Record" and "Authorized Agent" and provide all necessary daily and emergency operations, including:
  - 1. **Chief Operator:**  
Provide a Chief Operator as necessary, but at a **minimum of two days per week at each facility**, for a minimum of two hours of operation per facility visit. The NYS Wastewater Certification Grade of the Chief Operator shall be a minimum Grade 3A for the Goshen and Highland facilities; and a minimum NYS Wastewater Certification Grade 2A for all other facilities.
  - 2. **Operator:**  
Provide an Operator as necessary, but at a **minimum of two hours of operation per day (including holidays and weekends) at each facility**, except for those days the Chief Operator is present, for daily operations of the WWTP. The NYS Wastewater Certification Grade of the Operator shall be a minimum Grade 2A for the Goshen and Highland facilities; and a minimum NYS Wastewater Certification Grade 1A for all other facilities.
  - 3. **Duties:**  
In strict compliance with each Facility's SPDES permit, the Contractor shall perform duties including, but not limited to:
    - a. Provide all normal and emergency operational, process control, and adjustments, as necessary.
    - b. Provide all sampling, refrigeration, and transport, as necessary.

IFB 1162 Wastewater Treatment Management

- c. Provide all laboratory testing, (Lab Fees must be included in your monthly bid price) sampling equipment, (composite samplers) lab chemicals and supplies, and all coordination and reporting thereof.
- d. Perform all normal, routine, and preventative maintenance (Contractor shall provide all necessary hand tools) and record-keeping/logs of all work. Necessary process control chemicals, materials, equipment, or other items of work outside the scope of routine or preventative maintenance shall be requested as requisition work orders for immediate repair or attention and shall be forwarded to the applicable Facility Director.
- e. Develop and submit all Discharge Monthly Reports (DMRs) to the New York State Department of Environmental Conservation (NYSDEC) and others as needed on a timely basis.
- f. Contractor shall attend all NYSDEC and NYS Department of Health (NYSDOH) on-site inspections.
- g. Provide copies of all inspection and DMRs to the designated Facility Director(s) and Senior Architect at NYS OCFS.
- h. Provide an annual report at the end of the calendar year and at the end of the contract term to the applicable Facility Director(s) and Senior Architect at NYS OCFS.
- i. Contractor shall sign into the Facilities Main Office and sign out of the facility at every visit and shall strictly comply with the rules and standards of security of that facility as designated by the Facility Director(s). All logbooks for wastewater treatment services located at the WWTP must be signed indicating time, date, and type of service/inspections performed during visit.
- j. Contractor shall submit, on a bi-weekly basis, copies of all work logs, work orders (repair), as well as process control and progress of the WWTP to the designated Facility Directors and Senior Architect at NYS OCFS; and monthly, copies of DMR's to the designated Facility Directors and Senior Architect at NYS OCFS.
- k. In the event there are no work orders requested, the contractor shall submit a notice to the designated Facility Director(s) and Senior Architect at NYS OCFS, as follows: "No Work Orders Issued at \_\_\_\_\_ Facility for the period of \_\_\_\_\_ to \_\_\_\_\_."
- l. The contractor shall submit copies of each Operator's Wastewater Certificate annually and their schedule for the respective facilities to the Senior Architect at NYS OCFS. If any operator changes occur during the contract period, notification in writing of the change is required immediately.

4. **Duties and costs not to be included in the bid:**

- a. Purchase of WWTP process control chemicals and on-site lab equipment. (OCFS shall supply upon approval of Contractor request.)
- b. Electricity and other utility costs. (Paid by OCFS.)
- c. The purchase of materials or equipment parts for repair and replacement. (OCFS shall supply upon request by Contractor.)
- d. Building and grounds maintenance. (Performed by OCFS.)
- e. Snow plowing, shoveling, or removal. (Performed by OCFS.)
- f. Sludge disposal. (Facility will provide upon request of contractor.)

**Note: All routine and preventative maintenance on the specific mechanical, electrical, control equipment, and instrumentation of the WWTP & Pump Stations shall be performed by the Contractor.**

Applicants may subcontract components of the scope of work of up to 25% of their overall proposed bid to deliver requested WWTP services. 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. The State reserves the right to review and approve any subcontract for these services 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 a Chief Operator with required credentials, as necessary, but at a **minimum of 2 days per week at each facility**, for a minimum of two hours of operation per facility visit.
- Provide an Operator, with required credentials, as necessary, but at a **minimum of two hours of operation per day (including holidays and weekends) at each facility**, except for those days the Chief Operator is present, for daily operations of the WWTP.

The five facilities required to be serviced by the bidder are listed below:

- Finger Lakes Residential Center, 250 Auburn Road, Lansing, NY 14882
- MacCormick Secure Center, 300 South Road, Brooktondale, NY 14817

## IFB 1162 Wastewater Treatment Management

- Red Hook Residential Center, 531 Turkey Hill Road, Red Hook, NY 12571
- Highland Residential Center, 629 North Chodikee Lake Rd, Highland, NY 12528
- Goshen Secure Center, 97 Cross Road, Goshen, NY 10924

Please see the attached Exhibits for each facility listed in this solicitation. Bidders are advised to review all Exhibits thoroughly and use as a factor in determining bid rates and their ability to provide the required services at the listed facilities.

### **3.4 Security Procedures**

Please note 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)**

Not applicable.

## **4. Administrative Information**

### **4.1 Method of Award**

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

If a tie bid results, offeror(s) whose organization has the most months of experience providing similar services 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**

Bid price must include 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.

A 2% pay increase will be added to the successful monthly bill rate effective on the start date of the second year of the contract term and each subsequent year of the contract term.

The bidder is not responsible for costs associated with items identified in **Section 3.2 subsection 4 Duties and costs that are not included in the bid price**, as they are identified as being performed, provided, or paid by OCFS.

#### **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 five years and is subject to approval by the New York State Department of Civil Service (DCS), New York State Office of the Attorney General (OAG), and Office of the State Comptroller (OSC). Contractors may not begin to provide services before the contract start date; OCFS has no obligation to pay for services rendered before that time. Payments cannot be made before the formal execution of a contract. A copy of the terms and conditions of the contract are attached to this IFB.

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

Payments will be processed monthly following the completion of services and upon submittal of required documentation for services performed and/or a signed claim for payment form, as directed by OCFS in Appendix C-1 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 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 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;



IFB 1162 Wastewater Treatment Management

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 or 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;

## IFB 1162 Wastewater Treatment Management

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 or 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 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 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 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

IFB 1162 Wastewater Treatment Management

Business Enterprises (MWBE) and SDVOB as offerers, subcontractors, and suppliers on its procurement contracts.

Information on the availability of New York State-certified subcontractors and suppliers is available on the internet at [Empire State Development \(ny.gov\)](http://www.esd.ny.gov) and [Office of General Services \(ny.gov\)](http://www.ogss.ny.gov).

For additional information and assistance, contact:

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

Directories of New York State-certified MWBE/SDVOB are available from:

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

Division of Service-Disabled Veterans' Business Development  
32<sup>nd</sup> Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12242  
Telephone: 518-474-2015  
Email: [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov)  
<https://sdves.ogs.ny.gov/business-search>

**NOTE:** Companies requesting lists of potential subcontractors and suppliers are encouraged to utilize the [National Institute of Governmental Purchasing \(NIGP\)](http://www.nigp.gov), [North American Industry Classification System \(NAICS\)](http://www.naics.com), and [Standard Industrial Classification \(SIC\)](http://www.sic.gov) to identify the codes, size, and location of vendors and services to assist in searches of the NYSCS and OGS directories.

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

IFB 1162 Wastewater Treatment Management

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 NYS Empire State Development (ESD) business enterprises, including certified MWBE; or
  - Contacted ESD to obtain listings of NYS 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 NYS 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 the 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 all respects in making such assignment or transfer, including, but not limited to, executing 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 principal place of business is in a “discriminatory jurisdiction.” This is defined as a

state or political subdivision that employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York State business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. A list of discriminatory jurisdictions is maintained by the Commissioner of New York State Empire State Development.

#### **4.12 Executive 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 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 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 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](#).

##### **4.13.1 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 promotes opportunities for the maximum feasible participation of New York State-certified MWBE and the employment of minority group members and women in the performance of OCFS contracts. OCFS has established its overall agency goal of 30% MWBE participation, 15% for New York State-certified Minority-owned Business Enterprises and 15% for New York State-certified Women-owned Business Enterprises. OCFS supports the establishment of partnerships with MWBE. Such partnerships may include utilizing certified MWBE as subcontractors, suppliers, protégés, or in other supporting roles to the maximum extent practicable and consistent with the legal requirements of the State Finance Law and Executive Law Article 15-A. Certified MWBE may be readily identified through the directory of NYS certified MWBE at <https://ny.newnycontracts.com>.

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

Procurement and Contract goals are established based on the current availability of MWBE to assist in the execution of a distinct element of the work of the contract. The goal for this procurement may be higher or lower than the percentage level of the Agency's overall goal depending on such factors as the type of services involved, the location of these services, and the availability of MWBE who are able to provide a Commercially Useful Function (CUF) in the performance of services required. For purposes of this solicitation, OCFS hereby establishes an overall goal of 0% of discretionary non-personnel service spending for NYS certified MWBE participation, 0% for MBE participation and 0% for WBE participation. A contractor ("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 who will perform a CUF 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. The directory of NYS certified

MWBE 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 CUF, as defined in 5 NYCRR § 140.1, and include responsibility for the execution of a distinct element of the work of the contract, evidencing the responsibilities and risks of the business owner may be applied towards the achievement of the applicable MWBE participation goal. The portion of a subcontract with an MWBE serving as a broker which can be credited towards the goal shall be 25% of the sum paid on the subcontract.

#### **4.13.3 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, the 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 accessed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange 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 must be completed in the NYSCS within 20 days of receipt of Award Letter notification. Contracts will not be executed until the MWBE Utilization Plan has been approved in NYSCS.

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 within seven business days of receipt by submitting to OCFS a



written remedy in response to the notice of deficiency to [contractcompliance@ocfs.ny.gov](mailto: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 approved MWBE Utilization Plan, during the performance of the contract. Requests for a partial or total waiver of established goal requirements made after contract award may be made at any time during the term of the contract to OCFS but MUST be made before the submission of a request for final payment on the contract.

The successful respondent will be required to submit an MWBE quarterly Contractor Compliance and Payment Audit Report to OCFS in the NYSCS by the 10<sup>th</sup> day following each end of quarter over the term of the contract, documenting the progress made toward achievement of the MWBE goals of the contract.

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

By submitting a bid or proposal in response to this solicitation, the respondent agrees with all 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 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 should submit [OCFS-3460, Minority- and Women-owned Business Enterprises \(MWBE\) and Equal Employment Opportunity Policy Statement](#), as referenced in **Section 2.2 Packaging of IFB Response**, 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 subcontractors 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 NYS Service-Disabled Veteran-Owned Business (SDVOB) 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, consistent with its Master Goal Plan, OCFS has an established agency goal of 6% and strongly encourages vendors who contract with OCFS to consider using certified SDVOBs that are responsible and responsive for at least 6% of discretionary non-personnel service spending in the fulfillment of the requirements of their contracts with OCFS. Such

partnering may include utilizing certified SDVOBs as subcontractors, suppliers, protégés, or in other supporting roles to the maximum extent practicable 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 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 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 subcontractor(s). 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 email 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 NYS 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 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 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 NYS 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 NYS 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 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 [itservicedesk@osc.ny.gov](mailto: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 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 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 the OSC has determined municipalities are not required to show proof of coverage.

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

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

- **Form C-105.2** - *Certificate of Workers' Compensation Insurance* issued by private insurance carriers, or **Form U-26.3** issued by the State Insurance Fund<sup>3</sup>; or
- **Form SI-12<sup>4</sup>** - *Certificate of Workers' Compensation Self-Insurance*; or **Form GSI-105.2<sup>5</sup>** *Certificate of Participation in Workers' Compensation Group Self-Insurance*; or
- **CE-200<sup>6</sup>** - *Certificate of Attestation of Exemption* from New York State Workers' Compensation and/or Disability and Paid Family Leave Benefits coverage.

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

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

<http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

- **Form DB-120.1<sup>3</sup>** - *Certificate of Disability Benefits Insurance*; or
- **Form DB-120.2** – *Certificate of Participation in Disability Benefits Group Insurance*; or
- **Form DB-155<sup>7</sup>** - *Certificate of Disability Benefits Self-Insurance*; or

- **CE-200<sup>6</sup>** - *Certificate of Attestation of Exemption* from New York State Workers' Compensation and/or disability benefits coverage.

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

Tax Law [section 5-a](#), which was added to the Tax Law under Part N of Chapter 60 of the Laws of 2004, imposes upon certain contractors the obligation to certify whether the contractor and its affiliates are required to register to collect state sales and compensating use tax. Where required to register, the contractor must also certify 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 NYS Sales and Compensating Use Taxes can be found at the following websites:

Publication 223

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

ST-220-CA

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

ST-220-TD

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

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

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

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

##### **4.24.1 Confidentiality**



New York State law requires 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: NYS 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 the grant of an award may be negatively impacted if background checks reveal 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 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<sup>st</sup> through March 31<sup>st</sup> 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 they will work, and the amount they will be paid working under the State contract. This will include information on any persons working under any subcontracts with the State contractor.

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

- **Annual Report Requirements**

State contractors must also report each year on the actual employment information described above, including work performed by subcontractors. The report must include employment information for the period ending March 31<sup>st</sup> of each year. To comply with the annual reporting requirement, State contractors must complete form [AC 3272-S NYS Consultant Services – Contractors Annual Employment \(Form B\)](#) and submit it by April 30<sup>th</sup> 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 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 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 the proposal or bid submitted by the unsuccessful offerer was not selected for an award.

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

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

2. When OCFS receives a timely written request from the unsuccessful offerer, it will schedule the debriefing to occur within a reasonable period of time. Debriefings will be conducted in-person unless OCFS and the offerer mutually agree to utilize other means, including, but not limited to, telephone, video-conferencing, or other types of electronic communications.
3. Such debriefing will include: (a) the reasons 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 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 there are compelling circumstances, including the need to proceed immediately with contract award and development of final contracts in the best interests of the State, then these protest procedures may be suspended, and such determination shall be documented in the procurement record.
- c. OCFS will consider all information relevant to the protest, and may, at its discretion, suspend, modify, or cancel the protested procurement action, including solicitation of bids, or withdraw the recommendation of contract award before issuance of a formal protest decision.
- d. Unless a determination is made to suspend, modify, or cancel the protested procurement action, or withdraw the recommendation of contract award, OCFS will continue procurement and contract award activity before the formal protest determination. Receiving a formal protest will not otherwise stop action on the procurement and award of the contract(s) or on development of final contracts.
  - i. The procurement record and awarded contract(s) will be forwarded to OSC, and a notice of the receipt of a formal protest and any appeal will be included in the procurement record. If a formal protest determination, or a decision after appeal, has been reached before transmittal of the procurement record and the contract(s) to OSC, a copy of the formal protest determination or decision after appeal will be included in the procurement record and with the contract(s).
  - ii. If a formal protest determination or decision after appeal is made after the transmittal of the procurement record and contract(s) to OSC, but before OSC approval, a copy of the formal protest determination or decision after appeal will be forwarded to OSC when issued, along with a letter either:
    - (a) confirming the original OCFS recommendation for

award(s), (b) modifying the proposed award recommendation, or (c) withdrawing the original award recommendation.

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

#### **E. Appeal to the Office of the State Comptroller**

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

#### **4.27 Standard Contract Language**

[OCFS Non-Grant Contract Sample \(State funding\)](#)  
[OCFS Non-Grant Contract Sample \(Federal funding\)](#)

The terms and conditions can be viewed [online and are hereby incorporated into this IFB](#). By applying to this IFB, offerers agree 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 provisions of Appendix A. Please review the

sample non-grant contract templates provided here:  
<https://ocfs.ny.gov/main/contracts/samples.php>.

#### **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 A-2 (Program Specific Clauses)
7. Appendix B: Budget and Instructions
8. Appendix C: Payment and Reporting Terms and Conditions
9. Appendix C-1: Payment and Reporting Schedule
10. Appendix D: Work Plan
11. Appendix HIPPA (when applicable)
12. Appendix MWBE
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-State.pdf>